

EXHIBIT 3

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

BY AND BETWEEN

**CITY OF DENTON
(as Owner)**

AND

**BURNS AND MCDONNELL ENGINEERING COMPANY, INC.
(as Contractor)**

**FOR THE CONSTRUCTION OF AN
ELECTRIC POWER GENERATION FACILITY**

DATED AS OF SEPTEMBER 13TH, 2016

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LIST OF EXHIBITS

- A. Scope of Work & Design Basis
 - a. Appendix A – Material Specifications
 - b. Appendix B – Subcontract and Equipment List
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- B. Form of Change Order
- C. (1) Form of Partial Lien Waivers and Release
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- G. Milestone Payment Schedule
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ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT (this “Agreement”) dated as of and effective the 13th day of September, 2016 (**“Effective Date”**), is by and between Burns and McDonnell Engineering Company, Inc., a corporation organized under the laws of the State of Missouri (hereinafter referred to as **“Contractor”**) and City of Denton, a home-rule municipal corporation organized under the laws of the State of Texas (hereinafter referred to as **“Owner”**). Contractor and Owner may be referred to collectively as the **“Parties”** or individually as a **“Party”**.

RECITALS

WHEREAS, Owner has contracted with Wärtsilä North America, Inc. for the design and supply of reciprocating engines, generators, auxiliary modules, emission control equipment, radiators, silencers, control system and other OEM provided equipment together with technical services for the start-up and commissioning of such equipment and training, which are to be incorporated into Owner’s reciprocating internal combustion engine (RICE) electric generating facility;

WHEREAS, Contractor has represented to Owner that it is qualified to perform engineering, procurement, construction, testing, start-up, commissioning and training services of the nature contemplated by this Agreement; and

WHEREAS, Owner desires to engage Contractor to perform engineering, procurement, construction, testing, start-up, commissioning and training services related to Owner’s planned 225 MW electric power generating facility, which is to be located in the City of Denton, Texas, including the installation of the Owner Supplied Equipment to be incorporated facility, and Contractor desires to perform such services for Owner;

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions set forth in this Agreement, Contractor and Owner agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1. Definitions.

In addition to other defined terms contained in this Agreement, the following terms shall have the meaning specified below in this Article.

“Affiliate” of a Party means any other entity directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Party.

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“Applicable Law” means any law, including, but not limited to, Environmental Laws, statute, rule, regulation, ordinance, code, judgment, decree, injunction, writ, order, license, regulation of any Governmental Authority having jurisdiction over a Party or any portion of the Work, in each case applicable to the Work or the rights and obligations of a Party under this Agreement.

“Bonds” means the tax-exempt utility revenue bonds planned to be issued by Owner and underwritten by JP Morgan Chase and Citibank in a gross principal amount of approximately \$265,000,000.

“Bond Financial Closing” shall have the meaning set forth in Section 3.1(a).

“Business Day” means a day other than Saturday, Sunday, or a day other than on which banks are legally closed for business in the State of New York.

“Change in Law” means the enactment, adoption, promulgation, modification (including a written or oral change in interpretation by a Governmental Authority) or repeal of any Applicable Law or Permit after the Effective Date that has or will have an adverse effect on Contractor’s costs and/or schedule for performing the Work; provided, however, that no Change in Law pursuant to the Contract Documents shall arise or be deemed to arise by reason of (a) any applicable national, federal, state or provincial (other than City of Denton) income tax law (or any other applicable tax law based on income), (b) a labor wage law or other Applicable Law (other than imposed by City of Denton) that affects Contractor’s or its Subcontractor’s costs of employment, and (c) the final enactment, modification, amendment or repeal of an Applicable Law prior to the Effective Date with an effective date of such action that falls after the Effective Date.

“Change Order” means a written instrument, in substantially the form attached hereto as **Exhibit B**, signed by Owner and Contractor in accordance with **Article V**.

“Confidential Information” means information or data that the Disclosing Party considers to be a trade secret or competitively sensitive and which is designated as such in writing by the Disclosing Party. In order to be considered Confidential Information, written information has to be identified at the time of the disclosure with an appropriate legend, marking, stamp or positive written identification on the face thereof as Confidential Information. In order to be considered Confidential Information, verbal or visual information has to be so identified at the time of the verbal or visual disclosure and the Disclosing Party will notify the other Party (the **“Receiving Party”**) in writing within thirty (30) days of the disclosure and specifically identify the Confidential Information previously disclosed. Confidential Information does not include information or data that:

- (a) was in the public domain at the time of the disclosure or is subsequently made available to the general public without restriction and without breach of this Agreement;

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(b) was known by the Receiving Party at the time of disclosure without restrictions on its use or independently developed by the Receiving Party, as shown by adequate documentation; or

(c) is disclosed to the Receiving Party by a third person without restriction and without breach of any agreement or other duty to keep the information confidential.

“Contamination” means any Hazardous Material present at the Site or which has been brought to the Site by a party other than Contractor or its Subcontractors.

“Contract Completion Date” means June 30th, 2018 as may be adjusted pursuant to the Agreement.

“Contract Documents” means this Agreement plus all attachments, exhibits, specifications, schedules, and drawings and any Change Orders or amendments thereto.

“Contract Interest Rate” shall have the meaning set forth in **Section 4.3(c)**.

“Contract Price” means [REDACTED], which is the total amount payable to Contractor pursuant to this Agreement in accordance with the “Milestone Payment Schedule” in **Exhibit G**, as adjusted pursuant to the terms hereof.

“Contractor” shall have the meaning set forth in the preamble to this Agreement.

Contractor Payment & Performance Bond shall have the meaning set forth in **Section 4.7(c)**.

“Contractor’s Project Manager” or **“Project Manager”** shall mean the person identified in **Section 7.2**.

“Control” means the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract, or otherwise, and **“Controlled”** and **“Controlling”** shall have correlative meaning.

“Corrective Action Plan” shall have the meaning set forth in **Section 3.2(c)**.

“Date Certain” means the date that occurs one hundred eighty (180) days after the Contract Completion Date.

“Delay Damages” shall have the meaning set forth in **Sections 9.6 and 12.8** and as follows:

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\$65,000 per calendar day after Contract Completion Date for the months of July and August of 2018;

\$15,000 per calendar day after Contract Completion Date for the months of September thru December of 2018 and January thru June of 2019

“Delivery Point” means the point of delivery for the Owner-Supplied Equipment as set forth in Section 2.20 (d).

“Design Warranty” shall have the meaning set forth in Section 6.2.

“Disclosing Party” means the Party disclosing information in Section 15.2.

“Early Substantial Completion” shall mean the number of days Substantial Completion is achieved prior to the Contract Completion Date. Owner shall compensate Contractor \$3,000 per calendar day for each day that Substantial Completion is achieved prior to the Contract Completion Date.

“Effective Date” shall have the meaning set forth in the preamble to this Agreement.

“Engineering Services” shall have the meaning set forth in Section 6.2.

“Engine Hall” means each of the two engine halls in the main power station building at the Site as more particularly described in Exhibit A.

“Environmental Laws” means all federal, state and local laws, rules, regulations and ordinances governing, regulating or relating to public health, pollution, or the protection of the environment (including ambient air, noise, soil, surface water, ground water, wastewater, wetlands, land or subsurface strata), including, but not limited to, those relating to (a) emissions, discharges, releases or threatened releases of Hazardous Materials into the environment, (b) manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, and (c) human exposure to Hazardous Materials or conditions, including the laws and regulations promulgated pursuant to: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq., as amended, the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., as amended, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., as amended, the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., as amended, the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended, the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., as amended, the Oil Pollution Act, 33 U.S.C. § 2701 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., the Endangered Species Act, 16 U.S.C. § 1531 et seq., as amended, the Safe Drinking Water Act, 42

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U.S.C. § 300f et seq., as amended, and the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., as amended, together with all applicable similar and related federal, state and local laws, rules, regulations and ordinances, as may be amended from time to time.

“Equipment Contract” means the contract between Owner and Equipment Contractor, including all specifications, exhibits and schedules thereto (except for any redaction of confidential pricing information), which are attached hereto as part of **Exhibit A** and which, for the avoidance of doubt, including any subsequent amendment or change order to the Equipment Contract.

“Equipment Contractor” means Wärtsilä North America, Inc.

“Equipment Contractor Caused Excusable Event” means each of the following:

- (a) the failure of the Owner-Supplied Equipment to pass any performance or functional test required in this Agreement for any reason not attributable to Contractor;
- (b) the failure of Equipment Contractor to complete the Owner-Supplied Generator Set Deliveries or the Other Owner-Supplied Equipment Deliveries within the relevant time periods therefor set forth in the Project Milestone Schedule or the failure of Equipment Contractor to provide its completed drawings, designs, schematics, and plans by the date set forth for such delivery in the Project Milestone Schedule;
- (c) a manufacturing defect in any Owner-Supplied Equipment;
- (d) the failure of any portion of the Owner-Supplied Equipment to conform to a certified drawing (or other drawing with respect to which Owner has instructed Contractor to proceed with the Work) that Equipment Contractor shall have delivered to Contractor; or
- (e) a delay caused by design changes or modifications (including scope modifications) required by Equipment Contractor or Owner to any Owner-Supplied Equipment.

“Facility” means all of the equipment and systems related to the nominal 225 megawatt reciprocating engine natural gas-fired electric generating facility, consisting of the Owner-Supplied Equipment together with all other equipment, systems and materials, including associated and ancillary systems, subsystems, assemblies, instruments, equipment, apparatus, materials, structures, facilities, appliances, lines, conductors, and all other components and documents comprising, describing and integrating the entire facility into a fully operational power plant as described in **Exhibit A**.

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“Facility CPM Schedule” shall have the meaning set forth in **Section 3.2(b)**.

“Final As-Built Drawings and Documentation” means all drawings, specifications and other documentation prepared by Contractor to construct the Facility in accordance with the standards of performance set forth in **Section 6.2**, which accurately and completely represent in detail in all material respects the physical placement of all Facility components and systems as installed and/or constructed as at the time of Final Completion, including “as-built” surveys illustrating the established building setback lines, if any, and the location of the Facility on the Site and within any established boundaries and setback lines.

“Final Completion” shall have the meaning set forth in **Section 9.7(a)**.

“Final Notice to Proceed” means the written notice delivered from Owner to Contractor indicating that the Bond Financial Closing has occurred.

“Force Majeure” shall have the meaning set forth in **Section 16.1**.

“Generator Set” means the unit consisting of the assembly of a Wärtsilä W18V50SG engine, generator, flywheel, mechanical coupling, alternator and base-frame, all of which are Owner-Supplied Equipment.

“GenSet Delivery Site Work” means the Contractor’s Project Milestones for Work which includes (a) preparing a sufficient portion of the Site with reinforced aggregate as laydown and assembly areas of Owner-Supplied Equipment to comprise the Generator Sets and (b) constructing, erecting, and inspecting each Engine Hall, all in accordance with **Exhibit A**, so that it is ready for heavy haul of and setting down of such assembled Generator Sets by Equipment Contractor for its completion of Owner-Supplied Generator Set Deliveries.

“Governmental Authority” means any United States federal, state, local or other governmental, regulatory or administrative agency, governmental commission, department, board, subdivision, court, tribunal, or other governmental arbitrator, arbitral body or other authority.

“Guaranteed Emissions Limits” means the emissions of the equipment listed in Exhibit K that comply with the levels set forth in **Exhibit K**.

“Hazardous Materials” means, collectively, (a) any hazardous, toxic, or polluting substance, material, or waste as defined or regulated under any Applicable Law; (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by a Governmental Authority.

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“Initial Notice to Proceed” shall have the meaning set forth in **Section 3.1**.

“Key Personnel” means those Contractor positions identified in **Section 2.19**.

“Lien” means with respect to any property or asset, any mortgage, deed of trust, lien, pledge, charge, security interest or encumbrance of any kind, whether or not filed, recorded or otherwise perfected or effective under Applicable Law, as well as the interest of any lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“Major Subcontractors” means any Subcontractor with a scope of work having consideration due to such Subcontractor greater than \$1,000,000.

“Major Subcontracts” means all of the contracts between Contractor and Major Subcontractors.

“Mechanical Completion” shall have the meaning set forth in **Section 9.2**.

“Milestone Payment Schedule” means the summary schedule of values as shown in Exhibit G.

“Milestone Payment” shall have the meaning set forth in **Section 4.3(a)**.

“Other Equipment Delivery Site Work” means the Work comprised of Contractor’s timely making available of sufficient space at the Site for Equipment Contractor to complete Other Owner-Supplied Equipment Deliveries, in each case which tasks are more particularly described in **Exhibit A**.

“Other Owner-Supplied Equipment Delivery” means each delivery of all Owner-Supplied Equipment (other than that which is included in Owner-Supplied Generator Set Delivery) in shipping containers available for removal from back of Equipment Contractor’s trucks at the designated Site truck receiving area, complete with corresponding packing lists supplied by Equipment Contractor, each referred to as Project Milestones with Activity Codes A1850, A1860, and A1870 in the Project Milestone Schedule.

“Owner” shall have the meaning set forth in the preamble hereto.

“Owner Event of Default” shall have the meaning set forth in **Section 10.7**.

“Owner’s Representative” means the person identified pursuant to **Section 7.1**.

“Owner-Supplied Equipment” means the equipment, and its associated erection drawings, installation instructions, operation and maintenance manuals, spare parts and technical advisor services to be acquired by Owner under the Equipment Contracts and furnished to Contractor as described in **Exhibit A**.

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“Owner-Supplied Equipment Commissioning Period” means the period of time identified as such in the Project Milestone Schedule, which days are intended to be consecutive except to the extent interrupted through no fault of the Equipment Contractors, beginning on the date that Mechanical Completion of the Owner-Supplied Equipment has been achieved hereunder, during which time the Owner-Supplied Equipment will be started-up, preliminarily tested, and commissioned by Equipment Contractor under the Equipment Contract; provided, however, if the Equipment Contractor’s access to the Owner-Supplied Equipment is impeded for reasons not attributable to the Owner-Supplied Equipment or the Equipment Contractor, without limitation of Owner’s other remedies and rights under these Contract Documents, the Equipment Contractor shall be afforded additional days of access to the Owner-Supplied Equipment on a day for day basis once access to the Owner-Supplied Equipment has been made available and if the Equipment Contractor is unable to access the Owner-Supplied Equipment after Mechanical Completion has been achieved hereunder for reasons not attributable to the Owner-Supplied Equipment or to the Equipment Contractor; each such day during which the Equipment Contractor is unable to access the Owner-Supplied Equipment shall not be counted as a day in the Owner-Supplied Equipment Commissioning Period.

“Owner-Supplied Generator Set Delivery” means the Equipment Contractor’s (a) delivery of the Owner-Supplied Equipment which will comprise each of the twelve (12) assembled Generator Sets on their permanent foundations in each of the two Engine Halls (for a total of 12 Generator Sets), each set of six Generator Sets so completed and set down in Engine Hall 1 and Engine Hall 2 referred to as Project Milestones with Activity Codes A1880 and A1890, respectively, in the Project Milestone Schedule.

“Performance Security” shall have the meaning set forth in **Section 4.7(a)**.

“Performance Testing Protocol” means the protocol for Contractor performance of the Performance Tests for Station Auxiliary Load as established pursuant to **Exhibit K**.

“Performance Tests for Station Auxiliary Load” means the transmittal of adequate engineering data to show that Station Auxiliary Load is less than or equal to the Guaranteed Station Auxiliary Load in accordance with **Exhibit K**.

“Permits” means any permit, license, authorization, consent, registration, approval, permission, ruling, certification, or exemption that must be obtained from any Governmental Authority for the performance of this Agreement, as set forth in **Exhibit F**.

“Project Milestone” means those activities and associated deadlines set forth in the Project Milestone Schedule.

“Project Milestone Schedule” means the schedule of dates for completion of each principal category of the Work for achieving each Project Milestone and for achieving Substantial

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Completion by the Contract Completion Date. The Project Milestone Schedule is set forth in **Exhibit M**.

“Prudent Utility Practice” means that degree of skill and judgment and the utilization of practices, methods, and techniques and standards that are generally expected of skilled and experienced engineering and construction firms in the electric power industry in the United States of America. Prudent Utility Practice is not limited to the optimum practice, method or act to the exclusion of all others, but rather to a spectrum of reasonable and prudent practices, methods, standards and procedures.

“Punch List” means a listing of all incomplete or deficient Work, prepared and agreed to by the Parties pursuant to **Section 9.5**.

“Receiving Party” shall have the meaning set forth in the definition of “Confidential Information”.

“Reliability Guaranty” means the requirement that the Facility successfully completes the Reliability Test.

“Services” means the engineering, procurement, construction, testing, start-up and commissioning services to be performed by Contractor in accordance with the Contract Documents, all as more particularly described in **Exhibit A**.

“Site” means the Owner’s site on which the Facility is located, which is more particularly described in **Exhibit A**.

“Subcontractors” means any person with whom Contractor has entered into any subcontract, purchase order or other agreement for such person to perform any part of the Work or to provide any materials, equipment, supplies or services, including any person at any tier with whom any Subcontractor has further subcontracted any part of the Work.

“Substantial Completion” shall have the meaning set forth in **Section 9.2**.

“Warranty Period” means the period commencing on the date of Substantial Completion and ending on the first (1st) anniversary thereof; provided, however, any Work repaired or replaced shall be re-warranted for a one (1) year period that shall not, however, extend beyond the second (2nd) anniversary of the date of Substantial Completion.

“Work” means the Services and all things to be designed, engineered, manufactured, furnished, executed, installed, tested, completed, made good or otherwise provided by Contractor in accordance with the Contract Documents, all as more particularly described by the descriptions contained in **Exhibit A**.

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SECTION 1.2. Rules of Interpretation.

(a) Terminology. Unless otherwise required by the context in which any term appears:

(i) The singular shall include the plural and the masculine shall include the feminine and neuter.

(ii) References to "Articles," "Sections," "Annexes," or "Exhibits" shall be to articles, sections, annexes, or exhibits of the relevant Contract Document, and references to paragraphs or clauses shall be to separate paragraphs or clauses of the section or subsection in which the reference occurs.

(iii) The words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; the words "include," "includes" or "including" shall mean "including, but not limited to."

(iv) The term "day" shall mean calendar day (beginning at 12:00 a.m. and ending at 11:59 p.m.), in the location where the relevant (a) payment of funds is to be received, (b) notice is to be received, or (c) performance is to be made. Whenever an event is to be performed by a particular date, or a period ends on a particular date, and the date in question falls on a weekend, or on a day which is not a business day, the event shall be performed, or the period shall end, on the next succeeding business day.

(v) All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied.

(vi) All references to a particular entity shall include such entity's successors and permitted assigns.

(vii) All references herein to any contract (including the Contract Documents) or other agreement shall be to such contract or other agreement as amended and supplemented or modified to the date of reference.

(viii) All references to any Applicable Law includes any amendment, modification or successor thereto.

(ix) Words and abbreviations that have well-known technical or trade meanings are used in these Contract Documents in accordance with such recognized meanings, except to the extent a definition herein set forth requires otherwise.

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1.1.2 Headings. The titles of the articles and sections herein have been inserted as a matter of convenience or reference only, and shall not control or affect the meaning or construction of any of the terms or provisions hereof.

1.1.3 Joint Responsibility for Drafting. This Agreement was negotiated and prepared by both Parties and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part thereof.

1.1.4 Obligation to Act in Good Faith, Etc. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless otherwise expressly provided herein, where the Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld or delayed, and wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable. This Agreement may not be complete in every detail. Owner and Contractor shall comply with its intent and general purpose, and shall not avail itself of manifest errors or omissions herein to the detriment of the Facility.

ARTICLE II

THE WORK AND OBLIGATIONS OF THE PARTIES

SECTION 2.1. The Work

Contractor agrees to timely perform the Work for the Contract Price in accordance with the Scope of Work set forth in **Exhibit A**. Contractor shall fully perform the Work in accordance with Prudent Utility Practice, all Applicable Laws and all other terms and provisions of this Agreement. Contractor shall design, engineer and construct the Facility so that the Facility reaches Substantial Completion. Contractor shall also design, engineer and construct the Facility consistent with the criteria in the Equipment Contract so that the Owner-Supplied Equipment is able to achieve Equipment Contractor-guaranteed levels of output, heat rate, ramping, and start durations, as applicable. Contractor's responsibility pursuant to this Section shall be contingent upon Equipment Contractors' compliance with the requirements of their respective agreements and Contractor shall be entitled to relief subject to and in accordance with **Section 5.3** in the event of an Equipment Contractor Caused Excusable Event. Contractor acknowledges that pursuant to the foregoing obligation it shall carry out all of the supply and services required or that can be inferred reasonably from this Agreement even though not expressly mentioned herein so that the Work shall include any work that is necessary to satisfy the requirements of the Contract Documents, and to the extent not specifically addressed by the Contract Documents, in accordance with Prudent Utility Practice. The Parties shall cooperate fully in all regards with the intent to

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improve the performance of the Work and reduce the likelihood of operating and maintenance impacts consistent with the requirements of the Contract Documents.

SECTION 2.2. Specific Obligations for the Work

Without limiting the generality of **Section 2.1** or the requirements of any other provision of this Agreement (including, but not limited to, **Exhibit A**), Contractor shall:

- (a) Protect from damage and properly store all equipment procured by Contractor or accepted by Contractor at the Site or other location (including Owner-Supplied Equipment);
- (b) Provide construction, construction management (including the furnishing of all field supplies, tools, construction equipment, and all Site supervision and craft labor), engineering, procurement, inspection and quality control services required under this Agreement;
- (c) Coordinate all delivery schedules and performance obligations of all Subcontractors so that performance under such subcontracts and purchase orders, as the case may be, is enforced in accordance with the terms thereof and as required by this Agreement;
- (d) Perform inspections of the Work of Subcontractors as reasonably required to determine conformance with all of the requirements of this Agreement;
- (e) Comply with all Applicable Laws, including, but not limited to, state and federal occupational, safety and health laws and regulations;
- (f) Perform all quality control and quality assurance activities (including witnessing tests) to confirm that the Work complies with this Agreement;
- (g) Perform the Work in accordance with the Project Milestone Schedule; and
- (h) Perform commissioning and start-up, including the turnover packages, technical direction, and Owner interfaces.

SECTION 2.3. Spare Parts

Contractor shall provide Owner with a recommended spare parts list as equipment is procured with a final list, including prices, for the Facility within twelve (12) months after receiving a full Notice to Proceed. The spare parts list shall identify those spare parts that are recommended for operations. Except with respect to spare parts for Owner Supplied Equipment, Contractor shall supply the spare parts necessary for testing, start-up and commissioning. Subject

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to Owner's consent, which shall not be withheld unreasonably, Contractor may use any spare parts maintained on the Site by Owner. Contractor shall reimburse Owner for Owner's replacement cost of the Owner-supplied spare parts used by Contractor, unless replaced by an equipment supplier as a warranty replacement. Contractor's obligations to provide the spare parts list does not include any spare parts for Owner Supplied Equipment.

SECTION 2.4. Contractor's Tools and Equipment

Contractor shall furnish all tools and equipment necessary and appropriate for the timely and safe performance and completion of the Work.

SECTION 2.5. Employment of Personnel

(a) Contractor shall not employ, or permit any Subcontractor to employ, in connection with its performance under this Agreement, any unfit person or anyone not skilled in the Work assigned to such person. Contractor agrees to promptly remove (or to require any Subcontractor to remove) from its services in connection with the Work any employee who is unfit or unskilled. If Owner has any objection to the fitness or qualifications of any person retained by Contractor to perform the Work, Owner shall so notify Contractor in writing. Upon receipt of such notice, Contractor shall investigate Owner's concerns and take appropriate action, which may include the reassignment or removal of such person. Notwithstanding any other provisions in this Agreement to the contrary, Contractor shall provide workers qualified, skilled and specialized (and duly licensed as required) in the Work to which they are assigned.

(b) Owner reserves all rights to deny placement of any of Contractor's workers on Owner premises, property, equipment or projects in its reasonable discretion. Such denial of placement of subject workers shall be conveyed subject to the provisions of **Section 7.3 "Notices"**.

(c) Contractor shall use its commercially reasonable efforts to maintain good labor relations, shall comply with the applicable project labor agreement, and shall implement actions designed to avoid labor disputes that might adversely affect performance of the Work.

SECTION 2.6. Clean-up and Non-Interference

Contractor shall at all times keep the Site free from waste materials or rubbish caused by its activities. As soon as practicable after the completion of all Punch List items, Contractor shall remove all of its equipment and materials not constituting part of the Facility and remove all waste material and rubbish generated by Contractor or that Contractor has brought to the Site, in connection with Contractor's performance of the Work, from the Site to a permitted disposal facility, and restore the Site in accordance with all Applicable Laws and this Agreement.

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SECTION 2.7. Safety and Security

Contractor recognizes and agrees that safety is of significant importance in the performance of the Work and that Contractor is responsible for performing the Work in a safe manner. Contractor agrees to perform the Work, and Contractor shall require all Subcontractors to perform their portion of the Work, in accordance with the safety and health rules and standards of Applicable Law and the safety program developed by Contractor and submitted to Owner. Contractor further agrees to provide necessary training to its employees and Subcontractors to inform them of the foregoing safety and health rules and standards. Should Owner at any time observe Contractor, or any of its Subcontractors, performing the Work in an unsafe manner, or in a manner that may, if continued, become unsafe, then Owner shall have the right (but not the obligation) to require Contractor to stop the Work affected by the unsafe practice until such time as the manner of performing the Work has been rendered safe. Contractor shall be responsible for the security and care of the Facility as set forth in **Section 2.13**. Nothing in this **Section 2.7** shall affect Contractor's status as an independent contractor.

SECTION 2.8. Emergencies

In the event of any emergency endangering life or property, Contractor shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage, or loss and shall, as soon as possible, report any such incidents, including Contractor's response thereto, to Owner. If Contractor has not taken reasonable precautions for the safety of the public or the protection of the Work, and such failure creates an emergency requiring immediate action, then Owner, with or without advance notice to Contractor may, but shall be under no obligation to, provide reasonable protection as required to address such emergency; provided, however, that Owner shall in any event notify Contractor of any actions taken by Owner within ten (10) Business Days of taking such action. All reasonable direct costs so incurred by Owner as a result of any emergency caused by Contractor shall be reimbursed by Contractor.

SECTION 2.9. Approvals, Certificates, Permits and Licenses

Contractor shall obtain all approvals, certificates, and licenses required to be in Contractor's name to perform the Work and provide the Permits set forth in **Exhibit F**. Contractor shall promptly, within such time period as may be agreed upon by the Parties, provide Owner with reasonable assistance that Owner may require to secure the approvals, certificates, Permits and licenses required to be in the name of Owner as set forth in **Exhibit F**.

SECTION 2.10. Taxes

The Contract Price includes and Contractor shall be liable for and pay to the applicable Governmental Authority all taxes and contributions for unemployment insurance, benefits, withholding taxes, and similar benefits, as well as taxes measured by or imposed on the net income of Contractor by Applicable Law or collective bargaining agreements with respect to

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persons employed by Contractor for performance of the Work. Contractor shall indemnify Owner from, all such taxes and contributions, including any interest accrued and penalties imposed thereon.

On all invoices, Contractor shall separately show and Owner shall pay to Contractor, in addition to the Contract Price, all sales, use, value added, excises, assessments, charges, and other similar taxes imposed by any Governmental Authority on the Work, or any part thereof, including but not limited to Contractor's purchase or sale of equipment or other materials installed in, incorporated into, or affixed or attached to the Facility, the Site, or the Work (collectively, "Owner Taxes"); and Owner shall indemnify, defend and hold Contractor harmless from tax liability, interest accrued and penalties imposed as a result of (i) any failure or delay by Owner to pay Owner Taxes as part of a Contractor invoice or (ii) Owner's claim of exemption from such taxes which claim is later denied by the relevant Governmental Authority or later revised by Owner.

Contractor shall reasonably cooperate with Owner to utilize appropriate nontaxable transaction exemptions and certificates or similar certificates from other states (a properly-completed form of which shall be timely provided to Contractor by Owner), where allowed by Applicable Law, to minimize such Owner Taxes. Charges not subject to Owner Taxes shall be identified and no such Owner Taxes shall be charged to Owner thereon. In the event, however, that despite the use of nontaxable transaction certificates or the identification by Owner of charges not subject to Owner Taxes, such taxes are imposed by any Governmental Authority, such taxes and any resulting interest, fines, penalties, audit costs, and defense costs shall be invoiced to and reimbursed by Owner as set forth herein. Owner agrees to timely pay or reimburse Contractor for the disputed taxes once they are assessed to avoid any further tax liabilities, interest, penalties or fines against Contractor. Contractor shall provide sufficient detail, as requested by Owner, as to document the Work which was subject to Owner Taxes which are invoiced to Owner. Owner shall have the right to inspect and audit the records of Contractor with respect to such invoiced amounts. In the event of an audit by any Governmental Authority with respect to such taxes, Contractor shall provide reasonable cooperation to Owner to defend and document the amount of such taxes paid on the Work. Owner qualifies for sales tax exemption pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Tax Act. In the performance of its Work for Owner, Contractor may, by separate agreement, purchase materials and supplies and rent or lease equipment sales tax free. In connection with any such transaction, Owner would issue exemption certificates to Contractor in compliance with the State Comptroller's ruling #95-0.07 and #95-0.09.

SECTION 2.11. Hazardous Materials

Contractor shall design, construct, pre-commission, test and start-up the Facility and otherwise perform the Work in compliance with the requirements of all Applicable Laws. If, during the course of the performance of the Work, Contractor or any Subcontractor discovers, or reasonably believes it has discovered in, on or under any part of the Site, any Hazardous Materials (other than Hazardous Materials that Contractor or a Subcontractor has brought onto the Site,

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produced, created or used), Contractor shall proceed in accordance with **Section 13.4(c)**. Except to the extent of Contractor's responsibility under **Section 13.4(b)**, Owner shall be solely responsible and liable for all liabilities arising from: (i) Hazardous Material existing at the Site as of the date of this Agreement, and (ii) all other Hazardous Material brought to or produced at the Site by Owner, Equipment Contractors or others (other than Contractor or its Subcontractors) on or after the date of this Agreement.

SECTION 2.12. Progress Meeting and Reports

Contractor shall hold a monthly progress meeting during construction at the Site, or at an alternate location mutually agreeable to Owner and Contractor, for the purpose of reviewing the monthly progress report for the previous month with Owner. Contractor shall provide Owner with monthly progress reports, the following other information relating to the progress of the Work, and such other information as may be reasonably requested by Owner:

- (a) Minutes for all meetings involving the Owner within four (4) Business Days following such meeting;
- (b) Weekly progress reports of construction activities;
- (c) Incident reports within three (3) Business Days of the occurrence of safety incidents, environmental incidents or incident involving damage to the Facility (preliminary written notice is to be provided to Owner within eight (8) hours of a such incidents; provided, however, that verbal notice of critical or fatal injuries shall be provided to Owner within three (3) hours);
- (d) Monthly construction milestone status reports and monthly progress reports no later than the fifth (5th) Business Day of each month, which shall cover activities up to the end of the previous month;
- (e) Updates every month to the Facility CPM Schedule pursuant to **Section 3.2**;

SECTION 2.13. Care, Custody and Control/Risk of Loss

Upon the issuance of a Notice to Proceed pursuant to **Section 3.1(b)**, Contractor shall have the full responsibility for care, custody and control and risk of loss of the Facility including the Owner-Supplied Equipment upon transfer of risk of loss from the Equipment Contractor upon Owner-Supplied Generator Set Delivery and Other Owner-Supplied Equipment Delivery. While Contractor bears responsibility for care, custody and control and risk of loss of the Owner-Supplied Equipment, Owner shall, with Contractor's cooperation, obtain any repair services or replacements for the Owner-Supplied Equipment pursuant to the Equipment Contracts or otherwise from Equipment Contractor or its affiliate, including the allocation between Owner and Contractor of the responsibility for the costs thereof in accordance with the terms of this

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Agreement. Care, custody and control and risk of loss of the Facility shall transfer to Owner upon the earlier of (a) Substantial Completion (unless Owner specifically elects in writing to accept care, custody and control of the Facility prior to Substantial Completion) or (b) the date of termination of this Agreement pursuant to the provisions of **Article X**. If Owner elects to take care custody and control of the Facility before Substantial Completion is achieved, then Contractor may be entitled to a Change Order pursuant to the provisions of **Article V**; provided, however, that Contractor shall not be entitled to a Change Order if Owner elects to take care, custody and control of the Facility prior to Substantial Completion but after the Contract Completion Date and the resulting delay was not excusable under the Contract. In connection with Contractor's risk of loss obligation, Contractor shall be responsible for and obligated to replace, repair, or reconstruct, and to furnish any material, equipment, or supplies furnished by Contractor or Owner-Supplied Equipment (after transfer of risk of loss from the supplier thereof upon delivery to the Facility), which are lost, damaged, or destroyed prior to transfer of care, custody, and control of the relevant portion of the Facility or the affected portion thereof to Owner.

SECTION 2.14. Interpretation

In the event of any inconsistencies between Applicable Laws and the Contract Documents, Contractor shall comply with Applicable Laws. If Contractor finds a conflict, error, omission, inconsistency or discrepancy in the Contract Documents, then Contractor shall notify Owner before proceeding with the portion of the Work affected thereby.

SECTION 2.15. Operational Supervision

Prior to Substantial Completion, Contractor shall supervise Owner's relevant operations and maintenance personnel; provided, however, that Owner shall be responsible for the failure of its personnel to follow the reasonable direction of Contractor. Owner shall provide competent operators required for training and commissioning assistance in a timely manner.

SECTION 2.16. Responsibility for Subcontractors

(a) Contractor may subcontract portions of the Work to any person without further approval by Owner except for any Major Subcontracts, which for any Major Subcontractor not identified in **Exhibit A** are subject to Owner's review and approval, which approval shall not be unreasonably withheld or delayed. Contractor may have portions of the Work performed by its Affiliates or their employees, in which event Contractor shall be responsible for such Work and Owner will look solely to Contractor as if the Work were performed by Contractor.

(b) The issuance of subcontracts shall not relieve Contractor of any of its obligations under the Contract Documents, including, among other things, the obligation to properly supervise and coordinate the work of Subcontractors. Work performed by Contractor's Affiliates shall be treated as if the Contractor had performed the Work.

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(c) Owner's approval of any proposed Major Subcontract shall not constitute an approval of any portion of the Work or a waiver of any of Owner's rights hereunder or reduce Contractor's responsibilities hereunder. Contractor shall provide to Owner, on request, information concerning the status of the performance under and any disputes under each Major Subcontract, including information concerning specifications and cancellation terms.

(d) Notwithstanding any agreement with any Subcontractor(s), Contractor shall be solely responsible for the Work. Contractor has complete and sole responsibility as a principal for its agents and all others it hires to perform or assist in performing the Work. Except as otherwise provided in this Agreement, Owner shall not be deemed to have any contractual obligation to any Subcontractor and nothing contained in any subcontract shall create a contractual relationship between any Subcontractor and Owner.

SECTION 2.17. Key Personnel

Contractor shall appoint a Project Manager, a Construction Site Manager, and an Engineering Manager (together the "**Key Personnel**"), as set forth in **Exhibit J**. The Project Manager shall have full responsibility and authority for the Work on behalf of Contractor and shall act as Owner's primary point of contact with Contractor with respect to prosecution of the Work. Contractor shall not change a Key Personnel position or the person appointed to such position without the prior written consent of Owner, which shall not be unreasonably withheld or delayed.

SECTION 2.18. Co-operation and Coordination

Upon prior reasonable notice by Owner, Contractor shall cooperate with, and grant reasonable access to the Site to, any person whom Owner appoints in writing to provide services with respect to the Facility, including, without limitation, any person, whether employed by Owner or not, carrying out interface work in relation to the gas supply system, the electric interconnection facilities and the water supply and discharge system; provided, that Owner obtains agreement from such persons to coordinate with Contractor's work activities, comply with Contractor's health and safety requirements, Applicable Law and Prudent Utility Practices. Subsequent to Substantial Completion (or, if care, custody and control of the Facility is transferred to Owner prior to Substantial Completion), Owner and Contractor shall cooperate and coordinate so that Contractor's activities with respect to the Facility do not interfere with the operation and maintenance of the Facility and so that Owner's operation and maintenance of the Facility does not interfere with Contractor's completion of the Work with respect to the Facility.

SECTION 2.19. Start-Up, Commissioning and Testing Gas

(a) Contractor shall only use, and Owner shall cause the Equipment Contractor to only use, the natural gas supplied by Owner for the purposes of starting-up,

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commissioning, and initial operation and testing of the Facility and the performance of the Performance Tests. Owner shall cause the Equipment Contractor to follow the scheduling and nomination procedures for natural gas to be mutually developed by the Parties prior to the commencement of the Performance Tests on a basis consistent with the requirements of Owner's fuel supply and transportation agreement(s).

(b) The Parties acknowledge that they anticipate that the scheduling and nomination procedures for natural gas will include prior-day notice.

SECTION 2.20. Owner-Supplied Equipment

(a) **Care, Custody and Control.** From the date of completion of Owner-Supplied Generator Set Deliveries to each Engine Hall and each of the Other Owner-Supplied Equipment Deliveries at the respective Delivery Points, Contractor shall have care, custody and control of such Owner-Supplied Equipment until transferred to Owner as part of the Facility pursuant to **Section 2.13**. The Parties agree to develop a mutually agreeable inspection procedure with the Equipment Contractor addressing inspection upon receipt at the Delivery Point.

(b) **Separate Undertaking.** Subject to the other provisions of this Agreement, Contractor shall not be responsible for providing or furnishing the Owner-Supplied Equipment, and Owner shall provide or cause the Owner-Supplied Equipment to be provided or furnished. Contractor shall be responsible for receiving, handling, installing, testing and other tasks with respect to incorporating the Owner-Supplied Equipment into the Facility, as set forth in **Exhibit A**. The Owner-Supplied Equipment shall be made available to Contractor at the Delivery Point and shall be in compliance with the requirements of the Equipment Contracts as it exists on the date of this Agreement.

(c) **Administration of Equipment Contract.** Owner shall supply or cause the supply of the equipment identified in the Equipment Contract, subject to the terms thereof. Owner shall ensure that Equipment Contractor schedules a kick off meeting to take place no later than four (4) weeks from the issuance of a notice to proceed under the Equipment Contract. Contractor shall coordinate with Owner the oversight of the Equipment Contractor's performance under the Equipment Contract including technical review and coordination. Contractor shall conduct receiving inspection from Owner's shipper, off-loading (with the exception of off-loading the engine-generators), site storage and maintenance of Owner-Supplied Equipment until Substantial Completion. Contractor shall be responsible for installation of the Owner-Supplied Equipment in accordance with the Contract Documents. Notwithstanding any of the foregoing, Contractor shall not be liable to pay the Equipment Contractor for any Owner-Supplied Equipment, this being the sole responsibility of Owner. Contractor shall include a period lasting no less than the Owner-Supplied Equipment Commissioning Period in the

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Facility CPM Schedule for the commissioning of the Facility. Contractor shall coordinate with the Equipment Contractor to minimize the potential need for extending the Owner-Supplied Equipment Commissioning Period. Prior to and during the Owner-Supplied Equipment Commissioning Period, Contractor shall coordinate with Owner and the Equipment Contractor to ensure that (i) the necessary fuels, lubricants, operating supplies and third party interconnections are available as needed; (ii) any mobilization services to be provided by the Equipment Contractor can be performed so that Owner's trained operators are available, if needed under these Contract Documents, for operation of the Owner-Supplied Equipment; (iii) portions or all of the Facility will be operated at the times and at the loads reasonably requested by the Equipment Contractor; (iv) the Equipment Contractor will have reasonable access to all plant work areas (*i.e.*, shops, laydown space, warehouse, main power station building (when erected), etc.), station cranes and similar equipment in order for Equipment Contractor to complete their work; and (v) a copy of the control room log is available to the Equipment Contractor. Contractor acknowledges that it has reviewed the technical terms, the terminal points for the Owner-Supplied Equipment, and the conditions and requirements contained in the Equipment Contract and is satisfied that such terms, terminal points, conditions, and requirements are not inconsistent or in conflict with Contractor's obligations and responsibilities under this Agreement.

(d) **Delivery of Owner-Supplied Equipment.** Owner shall be responsible for causing the Owner-Supplied Generator Set Deliveries and the Other Owner-Supplied Equipment Deliveries to the following locations (the "**Delivery Points**"): (i) for the Owner-Supplied Generator Set Deliveries, their permanent foundations in each Engine Hall and (ii) for Other Owner-Supplied Equipment Deliveries, the Site area for the unloading of shipping containers on back of Equipment Contractor's truck. Owner shall provide Contractor at least five (5) days' notice of (a) the anticipated shipment date of each item of Owner-Supplied Equipment and (b) the anticipated delivery date of each item of Owner-Supplied Equipment.

(e) **Inspection; Storage of Owner-Supplied Equipment.** Upon receipt at the Site of any lot of Owner-Supplied Equipment, Contractor shall inspect the same (including Equipment Contractor's relevant packing lists provided by Owner or Equipment Contractor) visually and shall notify Owner of, and provide a reasonably detailed written description of, any shortage, defect or default relative to the Equipment Contract's technical specifications for such Owner-Supplied Equipment, if detected. Contractor shall request that Owner promptly remedy any shortage, defect or default, provided that if Owner disagrees with Contractor with respect to Contractor's assessment, the Parties shall submit the matter to resolution in accordance with Article 11. If it is finally determined that no material shortage, defect or default exists, then such Owner-Supplied Equipment shall be deemed satisfactory to Contractor as of the date of its delivery at the Site. The provisions of this **Section 2.22(e)** shall apply to

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any Owner-Supplied Equipment supplied to remedy any such shortage or default or in substitution for any defective Owner-Supplied Equipment which has been repaired. All necessary costs for storage, handling, erection and commissioning of any Owner-Supplied Equipment to be incurred after its delivery, and all costs and expenses incurred by Contractor relating to the administration of the Equipment Contract, review of vendor drawings, expediting and inspection of the Owner-Supplied Equipment are included in the Contract Price. Equipment Contractor shall remain responsible for any shortages in the Owner-Supplied Equipment not identified at the time of the inspection or for items required to complete the Work.

(f) **Equipment Contractor.** Notwithstanding any other provision of this **Section 2.22**, Contractor shall:

(i) deliver a copy of any correspondence or other communication that Contractor may receive from the Equipment Contractor to Owner immediately after Contractor's receipt thereof; provided, however, that Owner shall cause the Equipment Contractor generally to submit copies of all correspondence simultaneously or promptly to Contractor and Owner;

(ii) provide notice to Owner promptly after Contractor becomes aware of any material failure by the Equipment Contractor or Owner to perform its respective obligations under the Equipment Contract (including any work performed by Contractor or the Equipment Contractor that does not conform to the requirements of the Equipment Contract);

(iii) assist Owner in the review, evaluation and documentation of claims against the Equipment Contractor; and

(iv) record the Equipment Contractor's performance of its respective obligations under the Equipment Contract after delivery of the respective Owner-Supplied Equipment to the Site.

(g) Notwithstanding the foregoing, Contractor's authority in connection with Contractor's administration of the Equipment Contract shall be limited such that Contractor shall neither do nor undertake to do any of the following without Owner's prior written consent in each case:

(i) amend or modify the Equipment Contract;

(ii) waive or excuse the Equipment Contractor's performance of its obligations under the Equipment Contract;

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(iii) bring or commence any lawsuit, arbitration or other action in Owner's name or otherwise to enforce any of the Equipment Contractor's obligations under the Equipment Contract;

(iv) receive any amounts payable as liquidated damages or otherwise under any Equipment Contract; or

(v) release, compromise or waive any claim against the Equipment Contractor.

SECTION 2.21. Owner Obligations

(a) **Site.** As set forth in **Exhibit A**, Owner shall make the Site available to Contractor to support the project schedule, which, as of the Effective Date, reflects a plan to mobilize Contractor's activities on the Site on January 16, 2016.

(b) **Owner-Supplied Equipment.** No later than the dates set out in the Equipment Contract, Owner shall make available to Contractor the Owner-Supplied Equipment and, promptly after Owner's receipt, a copy of the design documents provided to it under the Equipment Contract. Owner is responsible for providing all field personnel and technical advisors from the Equipment Contractor as necessary for the Contractor to perform the Work. If Owner grants the Equipment Contractor time extensions or additional days for the Equipment Contractor's Start-Up and Performance Testing (as such terms are defined in the Equipment Contract) during the execution of the Work for reasons other than those attributable to Contractor, Contractor shall be entitled to a Change Order pursuant and subject to **Article V**.

(c) **Fuel, Water, and Lubricants.** Owner shall provide, at the relevant Site boundary or defined interface point, natural gas and all utilities, including water for construction, and testing and, after electricity, as set forth in **Exhibit A**, to enable construction, testing, start-up, commissioning, and initial operation of the Facility, and all Performance Tests in accordance with the Project Milestone Schedule. Owner shall provide the initial fills of lubricants and consumables as specified in **Exhibit A**.

(d) **Operations Personnel.** Owner shall provide, at its cost, a complement, consistent with normal staffing levels for the Facility of appropriately qualified, competent, and, where necessary, licensed operators when required by Contractor to support the Equipment Contractor's commissioning, initial operation of the Facility and all Performance Tests.

(e) **Start-Up Power.** Owner shall provide electric energy for the energization, commissioning, operation, and testing of the Facility; provided, however, Contractor shall use reasonable efforts to minimize the demand charges that Owner will incur for

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such supply of electric energy. Construction power prior to backfeed will be the responsibility of, and at the cost of, Owner, however, Contractor shall be responsible for distribution around the Site from within the Site boundary.

(f) **Scheduling and Delivery of Output.** Owner shall arrange for the delivery of all electric energy generated by the Facility. Notwithstanding anything to the contrary in the Contract Documents with respect to title and ownership, all electric power (including test power) generated by the Facility shall be the property of Owner. Contractor shall comply with the scheduling and nomination procedures for delivery of electric energy to be mutually developed by the Parties prior to the date for such delivery set out in the Project Milestone Schedule on a basis consistent with the requirements of Owner's interconnection agreement, any transmission service agreement, and any other relevant agreement identified by Owner to Contractor. The Parties acknowledge that they anticipate that the scheduling and nomination procedures for delivery of electric energy will include prior-day notice. Upon receipt of notice from Contractor in accordance with such scheduling and nomination procedures, Owner shall coordinate delivery of electric energy from the Facility to conduct start-up, operation, or testing; provided, that Owner shall only be required to provide for such delivery in accordance with the Project Milestone Schedule. Any delays may be cause for extended time and cost under Article V.

(g) **Licenses and Permits.** Owner shall obtain any approvals, certificates, Permits and other licenses required to be in Owner's name that are required for the Facility and as set forth in **Exhibit F**, except where such Permits or licenses are specifically identified to be the responsibility of Contractor as part of the Work as set forth in **Exhibit F**.

(h) **Taxes.** In addition to the Owner Taxes for which Owner is responsible pursuant to **Section 2.10**, Owner shall pay all property taxes assessed against the Facility, if applicable.

(i) **Drawings and Specifications.** Owner shall provide Contractor with access to and the right to use all drawings and specifications, if any, prepared for the Owner-Supplied Equipment, that are necessary for Contractor's performance of the Work.

(j) **Subsurface Conditions.** To the extent that actual subsurface conditions are substantially different from those identified in the April 2016 geotechnical study set forth in Contractor's proposal and adversely affect the Work, as notified to Owner by Contractor, Contractor shall be entitled to a Change Order pursuant to **Article V** and Owner shall then perform, at its cost and upon Contractor's written request, an additional geotechnical analysis.

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SECTION 2.22. Commercial Activities

Contractor shall not, and shall ensure that any Subcontractors do not, engage in any commercial activity or permit any third parties, under the Contractor's control, to establish commercial activities on the Site that are unrelated to the performance of the Work. Contractor shall not allow its employees to engage in any commercial activity on the Site other than the performance of the Work.

ARTICLE III

CONSTRUCTION SCHEDULE AND COST

SECTION 3.1. Commencement of the Work and Contract Completion Date

(a) Upon delivery of the initial notice to proceed (the "**Initial Notice to Proceed**") and Owner's payment to Contractor of the initial Milestone Payment in accordance with **Exhibit G**, Contractor shall diligently prosecute only the limited Work set forth in **Exhibit M** associated with such initial Milestone Payment. Contractor shall diligently prosecute the rest of the Work on an unrestricted basis in accordance with the Contract Documents upon Owner's issuance of a Final Notice to Proceed. Owner anticipates that the Final Notice to Proceed will be issued on or about October 13th, 2016 and if such anticipated date is a later date, then Owner shall provide Contractor with ten (10) Business Days' notice of the anticipated issuance of the Final Notice to Proceed. Contractor acknowledges and agrees that all amounts payable or to be paid by Owner under or in connection with this Agreement, other than the initial Milestone Payment, are in all respects subject to and conditioned upon the relevant governmental budget appropriation of sufficient funding to pay for the Facility (including the Owner's costs and obligations arising under the Contract Documents), which appropriation may be sourced from the financial closing of the Bonds in a final amount and on other terms and conditions that are satisfactory to and approved by Owner in its sole and absolute discretion (the "**Bond Financial Closing**"). Owner expects that, as of the Effective Date, Bond Financial Closing may occur as early October 13th, 2016 but does not commit to Contractor to cause any Bond Financial Closing or other appropriation to support the Facility and make payments hereunder to occur on such date or on any other date. Any Bond Financial Closing shall be evidenced by Owner's delivery to Contractor of the Final Notice to Proceed. If for any reason or cause Bond Financial Closing or other appropriation of sufficient funds to pay for Owner's costs and obligations under this Agreement does not occur and a Final Notice to Proceed is not issued on or prior to the date which is 120 days from the Effective Date (the "**Outside Date**"), then either Party may terminate this Agreement by written notice to the other Party delivered no later than 20 days after the Outside Date pursuant to which this Agreement will terminate (effective as of the day which is 10 days after the date such notice is delivered).

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without further liability or obligation of either Party to the other Party for any reason or cause and the initial Milestone Payment paid to Contractor shall be deemed entirely forfeited and shall not be refundable by Contractor for any reason. Until a Final Notice to Proceed is issued, Contractor shall not perform any Work not associated with the initial Payment Milestone as described in **Exhibit M** and shall not be entitled to any payment other than the initial Milestone Payment. If the Final Notice to Proceed is received later than October 13th, 2016 then Contractor shall be entitled to seek a Change Order in accordance with Article V to account for cost and schedule impacts. If the Agreement is so terminated, Contractor shall deliver to Owner promptly any documentation with respect to preliminary design and engineering Work performed in connection with the initial Payment Milestone promptly after such termination without representation or warranty as to usability, completeness or accuracy.

SECTION 3.2. Project Milestone Schedule and Facility CPM Schedule

(a) Following receipt of the Final Notice to Proceed, Contractor shall perform the Work continuously and with due diligence in accordance with the Project Milestone Schedule, as may be adjusted from time to time in accordance with this Agreement, so that each Project Milestone is timely achieved and so that Substantial Completion will be achieved by the Contract Completion Date.

(b) Within thirty (30) days after the issuance of an Initial Notice to Proceed, Contractor shall submit for Owner's review and approval a "Level II" schedule, in both electronic and hardcopy form, which shall use Primavera, conform to the Project Milestone Schedule, and identify the critical path for the Work. Within ninety (90) days after the issuance of an Initial Notice to Proceed, Contractor shall submit for Owner's review and approval a "Level III" critical path method schedule (the "**Facility CPM Schedule**"), in both electronic and hardcopy form, which shall use Primavera, conform to the Project Milestone Schedule, and set forth the timing of all elements of the Work and the interrelationship of such elements. The Facility CPM Schedule shall describe comprehensively, and in a form and to the level of detail agreed to by Owner, the activities required to complete the Work. The Facility CPM Schedule shall be a resource-loaded, integrated project schedule that includes all significant activities divided into specific, identifiable tasks according to their importance, together with a critical path schedule. The Facility CPM Schedule shall highlight selected activities by time period and type of activity showing the sequence in which Contractor proposes to perform the Work and the date by which Contractor reasonably requires that Owner shall have fulfilled its obligations under this Agreement and Contractor intends to rely upon the Facility CPM Schedule in connection therewith. Contractor shall not change

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the dates set forth in the Facility CPM Schedule for Owner's obligations unless approved by Owner.

(c) The Facility CPM Schedule shall be periodically (but at least monthly) updated and delivered to Owner, in both electronic and hard copy form, with the monthly progress report. Contractor shall provide an explanation of any expected delay in achieving a Project Milestone designated in **Exhibit M** by the date therefor in the Project Milestone Schedule and Contractor's plan (in a level of detail reasonably requested by Owner) to remedy such delay as necessary to achieve Substantial Completion by the Contract Completion Date and any additional costs associated with such plan. If at any time the Facility CPM Schedule shows that any Project Milestone (including Substantial Completion) will not be achieved within fifteen (15) days of such Project Milestone (and the Contract Completion Date with respect to Substantial Completion), Contractor shall advise Owner and submit to Owner for its review, a recovery plan that demonstrates Contractor's commercially reasonable efforts to recover lost time or, if the delay cannot be recovered using commercially reasonable efforts, provide a plan to mitigate further delays (a "**Corrective Action Plan**"). Upon receipt of Owner's approval (which shall not constitute or require a waiver of any right of Owner to Delay Damages or to declare or exercise remedies for any Contractor Default hereunder), which shall not be unreasonably withheld, Contractor shall implement such Corrective Action Plan as approved. The submission of a schedule under this Section 3.2 shall not, without a Change Order, change any contractual guarantee dates.

SECTION 3.3. Delays

Without limiting the obligations of Contractor set forth in **Sections 3.2(b) and 3.2(c)**, Contractor shall promptly notify Owner in writing of any actual or anticipated event that is delaying or could delay completion of the Facility in accordance with the Contract Completion Date. Contractor shall indicate the expected duration and anticipated effect of the delay, and the action being taken to correct the problem and make up for lost time. Subject to receipt of the appropriate Change Order for delays not caused by Contractor, Contractor shall take all steps reasonably available to Contractor to mitigate any impacts to the Contract Completion Date.

ARTICLE IV

COMPENSATION

SECTION 4.1. Compensation

Owner shall pay Contractor, as full compensation and consideration for Contractor's complete and timely performance of the Work and its other obligations hereunder, the fixed, turnkey lump sum Contract Price, subject only to adjustments by Change Order under the terms of this Agreement. Contract Price includes all Work, including equipment, materials,

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supplies, labor, intellectual property rights, transportation, and services to be provided by Contractor hereunder and all remedial work to be performed with respect to Contractor's warranties under Article VI or as otherwise required under the Contract Documents.

SECTION 4.2. Other Payments

In addition to, but not as part of, the Contract Price, Owner shall pay to Contractor:

- (a) payments with respect to any Owner Taxes pursuant to **Section 2.10**;
- (b) reimbursements to Contractor pursuant to **Section 5.3(c)**;
- (c) the costs of any termination or suspension pursuant to **Article X**;
- (d) any indemnity payments due to Contractor pursuant to **Article XII**; and
- (e) any other amounts due to Contractor under the terms of this Agreement.

SECTION 4.3. Monthly Billing

(a) Subject to the terms of this Agreement, each month Owner shall make progress payments to Contractor in accordance with the Milestone Payment Schedule set out in **Exhibit G** with respect to progress completed in accordance with the Facility CPM Schedule in the prior month and properly invoiced by Contractor to Owner hereunder, subject to Owner's right to retain payment pursuant to **Section 4.7** or withhold amounts pursuant to **Section 4.3(b)**. All payments shall be made by wire transfer to a bank account of which due notice shall have been given to Owner by Contractor. Payments as set out in the Milestone Payment Schedule for Work properly invoiced and encompassed within the progress invoice submitted pursuant to **Section 4.4** below shall be due and payable on the last day of the month in which such progress invoice was received; provided, however, that Owner's obligation to make payment shall be extended on a day-for-day basis for any failure by Contractor to submit its progress invoice on a timely basis in accordance with **Section 4.4**. Invoices shall be sent directly to the address of Owner set forth in Article VII but to the attention of: City of Denton Accounts Payable Department, with a copy to Denton Municipal Electric at the street and email address set forth in Article VII. Invoices must specifically reference this Agreement and Owner's Purchase Order Number.

(b) Payments to be made by Owner to Contractor shall be subject to withholding on the following basis:

- (i) Owner withholds monies otherwise due by way of a refund of any earlier overpayments by Owner not in dispute by Contractor;

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(ii) Any Delay Damages or Performance Damages not in dispute that are due and payable by Contractor to Owner;

(iii) Work not in accordance with the requirements of the Contract Documents;

(iv) Claims filed against Owner, the Facility or the Site arising from Contractor's actions or inactions in connection with the performance of the Work, other than claims for which Liens have been filed against Owner, the Facility or the Site that Contractor has fully bonded;

(v) Damages to Owner not covered by insurance as a result of Contractor's failure to comply with the Contract Documents for which Contractor is required to indemnify Owner pursuant to the Contract Documents; and

(vi) Where Owner has made demand in respect of any other monies which are due and payable to Owner in accordance with the terms of the Agreement which are not being disputed in good faith by Contractor; provided, Contractor has thereafter failed to make such payment.

(c) In the event Owner disputes any invoiced item, including the completion of Work for which payment is sought, Owner shall give Contractor written notice of such disputed item within ten (10) Business Days after receipt of the invoice. Owner may withhold the related portion of the payment from its payment of the progress invoice. If Contractor disputes such withholding, such dispute shall be resolved pursuant to **Article XI**, "Dispute Resolution"; provided, however, the Parties shall use their reasonable efforts to resolve any such dispute within twenty (20) days of the due date for Owner's payment of the related progress invoice. To the extent such dispute resolution determines that a Party improperly withheld payment owed to the other Party, the Party which improperly withheld payment shall make such payment to the other Party, with interest accruing from the original due date for such payment at the maximum rate required by Sec. 2251.025 of the Texas Government Code (Prompt Payment Act).

(d) To the extent Contractor fails to deliver the monthly progress report as outlined in **Exhibit I**, Owner's obligation to make payment shall be extended on a day-for-day basis.

(e) Contractor shall continue to perform the Work notwithstanding a withholding or set off by Owner or a dispute over amounts due.

SECTION 4.4. Contents of Progress Invoices

This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

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Contractor shall submit its monthly progress invoice no later than the fifth (5th) day of each month. Each progress invoice shall set forth the amount from the Payment Schedule, the accumulated payments of the Contract Price to date, the applicable Owner Taxes under **Section 2.10**, and any other entitlement to payment or reimbursement claimed by Contractor under this Agreement (including an explanation thereof). Each progress invoice shall be supported by Contractor's partial waiver of mechanic's liens and all other actual or potential encumbrances and rights of recovery against Owner for work that has been completed and payment received by Contractor in the form attached hereto as **Exhibit C-1** and (ii) partial lien waivers in the form attached hereto as **Exhibit C-1** from all Major Subcontractors.

SECTION 4.5. Final Payment; Liens

The final payment of the Contract Price set forth in the Payment Schedule in **Exhibit G** shall be made only upon the accomplishment of the following:

(a) Contractor shall complete all Work (other than any Work under **Sections 6.1** and **6.2** to the extent the Warranty Period applicable thereto extends beyond the date of the final payment), including Punch List Work; and

(b) Contractor shall execute and deliver to Owner Contractor's final waiver of liens in the form attached hereto as **Exhibit C-2** and final waivers of liens (in the form attached hereto as **Exhibit C-2**) executed by all Major Subcontractors.

Contractor shall indemnify, defend and save Owner harmless from all laborers', materialmen's, and mechanic's liens arising out of the Work and from all reasonable attorneys' fees relating thereto incurred by Owner so long as Owner has paid Contractor all undisputed amounts required by this Agreement.

SECTION 4.6. Effect of Payment

No payment, final or otherwise by Owner, shall be considered or deemed to represent that Owner or Owner's Representative or any other representative of Owner has inspected the Work, nor shall it constitute or be deemed an acceptance, in whole or in part, of any portion of the Work not, or subsequently determined not to be, in accordance with the Contract Documents.

SECTION 4.7. Security of Performance

(a) Owner shall retain and withhold payment of five percent (5%) of all payments due to be made to Contractor (the "**Retainage**"). Such amount shall be held by Owner. In lieu of Retainage, Contractor may, at its option as notified to Owner together with its progress invoice delivered under Section 4.4, provide Performance Security prior to the payment due date in respect of such progress invoice in lieu of Retainage in the form of an irrevocable demand letter of credit

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equal to at least five percent (5%) of the aggregate amount of the payments to be made to Contractor prior to the issuance of the letter of credit and that are to be made to Contractor based on the Milestone Payment Schedule, which Performance Security shall be substantially in the form of **Exhibit H**, from a major commercial bank or other financial institution issuer reasonably acceptable to Owner. The Performance Security shall be updated by Contractor every three (3) months to an amount equal to at least five percent (5%) of the aggregate amount of the payments made to Contractor prior to the issuance of the updated letter of credit and that are to be made to Contractor based on the Milestone Payment Schedule during the three (3) months after the issuance of the updated letter of credit (the “**Performance Security**”). Retainage shall be released by Owner upon its receipt of corresponding Performance Security satisfying the requirements of this Section. Except as provided in the immediately preceding sentence, Owner shall release the Retainage or, if applicable, the Performance Security, returning it to Contractor upon Substantial Completion; provided, however, that notwithstanding such a release of Retainage or the Performance Security, Owner will retain Retainage or Performance Security equal to 150% of the Punch List value until Final Completion.

(b) In order to secure Contractor’s performance obligations under this Agreement, Contractor shall within ten (10) days after receipt of the Final Notice to Proceed deliver to Owner a payment and performance bond in substantially the form set forth in Exhibit H and otherwise in form and substance compliant with the Law of the State of Texas for such bonds for projects similar to the Facility, duly issued by a reputable national underwriter reasonably acceptable to Owner (the “**Contractor Payment & Performance Bond**”).

SECTION 4.8. Wire Transfer Instructions

Owner shall make all payments due Contractor via wire transfer to Contractor’s account as follows:

Bank:	UMB Bank, N.A.
ABA:	
Account:	
Name:	Burns and McDonnell Engineering Company, Inc.
Address:	9400 Ward Parkway / Kansas City, MO / 64114
Reference:	Denton Energy Center

ARTICLE V

CHANGES IN THE WORK

SECTION 5.1. Change Order

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Change Orders may be initiated by either Owner or Contractor in accordance with this **Article V**. The Work, Contract Price, Contract Completion Date and any other obligation under this Agreement shall only be adjusted as allowed under this Agreement and any adjustment shall be documented by a Change Order. It is the desire of the Parties to keep changes in the Work and the Contract Completion Date at a minimum, but the Parties recognize that such changes may become necessary and agree that they shall be handled as follows.

SECTION 5.2. Individuals Authorized to Make Changes

All Change Orders must be approved and signed on behalf of Owner by Owner's Representative. Contractor's Project Manager may approve and sign any Change Order on behalf of Contractor.

SECTION 5.3. Change Orders

(a) To the extent that Contractor notifies Owner, within twenty (20) days of Contractor becoming aware of the impact of the relevant circumstances, and demonstrates that a Change (as defined in Section 5.3(b) below) (i) adversely affects Contractor's (or its Subcontractor's) ability to perform the Work, (ii) increases the cost of the Work or its other obligations under this Agreement, or (iii) causes a delay in the Project Milestone Schedule, the Target Substantial Completion Date or the Contract Completion Date or adversely impacts Contractor's critical path schedule, Contractor shall be entitled to claim an equitable and appropriate adjustment to the Contract Price, Contract Completion Date and any other affected obligation under this Agreement pursuant to a Change Order. Within a reasonable period of time after the Notice required by this section, but in no event later than thirty (30) days after such Notice, Contractor shall provide Owner with the information and other documentation then known to Contractor substantiating such claim. Contractor shall periodically update Owner with additional information as it becomes available until the claim is resolved. Failure of Contractor to provide the initial Notice of such claim within such twenty (20) day period shall constitute a waiver of any effect of such claimed Change and the right to request a Change Order therefor. If any Change affects Contractor's ability to achieve Substantial Completion by the Contract Completion Date, Contractor shall at Owner's request prepare a draft Change Order that, to the extent practical, does not adjust the Contract Completion Date, but compensates Contractor, as the case may be, for the effect of such Change by adjusting other milestones in the Project Milestone Schedule or other provisions of this Agreement pursuant to a Change Order. Adjustments to any price or scheduled date shall reflect only the reasonable and necessary impact of such Change. Within five (5) days of receipt of all such information from Contractor, Owner and Contractor shall meet and, acting reasonably and in good faith, negotiate a mutually acceptable Change Order in accordance with the principles set forth herein. Contractor shall not, and shall not be obligated to proceed with, any changes or extra work until the

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price of such change or extra work and its effect has been agreed upon in writing with Owner in a Change Order. Upon mutual approval of such Change Order, Contractor shall diligently perform the changes contemplated by such Change Order in accordance with the Contract Documents. Contractor shall not suspend, in whole or in part, performance of the undisputed Work during any dispute over the scope of the Work or during the review and negotiation of any proposed Change Order unless directed in writing to do so by Owner, and if so directed, Contractor shall do so without waiving any right with respect to such change or disputed item.

(b) Contractor shall be entitled in accordance with and subject to the other provisions of this Section to an equitable and appropriate adjustment to the Contract Price, Contract Completion Date and any other affected obligation under this Agreement pursuant to a Change Order in any of the following events: (1) Owner-directed changes; (2) the occurrence of an event of Force Majeure; (3) an act or omission of Owner in breach of its obligations under this Agreement (including an act or omission of Owner caused by Owner's contractors other than Contractor or any Subcontractor); (4) any Change In Law; (5) an Equipment Contractor Caused Excusable Event; (6) differing site conditions under **Section 8.1**; and (7) as otherwise provided in this Agreement (each of the foregoing being a "**Change**" for purposes of this Contract).

(c) Owner may initiate a change by advising Contractor in writing of the change believed to be necessary or desirable. As soon as practicable, Contractor shall prepare and forward to Owner a cost estimate and a schedule impact of the change, which shall include any applicable adjustment to the Contract Price, Contract Completion Date and any effect on Contractor's ability to comply with any of its obligations under this Agreement, including warranties. Contractor shall also consider any potential adjustments to the Work or the Project Milestone Schedule that may be undertaken to mitigate the effects of the change. Contractor shall be reimbursed for the reasonable costs incurred to prepare any estimate. Owner shall advise Contractor in writing of its approval or disapproval of the change. If Owner approves the change, Contractor shall perform the Work as changed.

(d) With respect to any such Change Order to adjust the Contract Completion Date, the Parties agree that such adjustment shall preserve the period of time between Contractor's "Target Substantial Completion Date" (which date shall be identified in the Project Milestone Schedule and updated from time to time as part of the Facility CPM Schedule to be provided by Contractor pursuant to **Section 3.2**) and the Contract Completion Date that would have existed absent the event giving rise to the Change Order other than any portion of such period of time between Contractor's "Target Substantial Completion Date" and the Contract Completion Date that is solely

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attributable to the actions of Owner in the performance of its obligations hereunder to preserve or extend such period of time.

SECTION 5.4. If No Agreement

If in connection with this **Article V** either Owner or Contractor disputes the existence, extent, validity of a Change or is unable to reach agreement on the terms of any Change in the Work, including, but not limited to, an adjustment in the Contract Price or Contract Completion Date, then either Party may notify the other Party that it desires to meet and resolve the dispute in accordance with **Article XI**. If the disputed portion of the proposed change to the Contract Price is less than \$500,000, Contractor shall proceed with the Work described in the disputed Change Order pending resolution of the dispute. If such disputed portion is equal to or greater than \$500,000, Contractor shall proceed with the associated work on a time and materials basis which time and materials payments to Contractor shall be subject to adjustment upon the resolution of the dispute. Under no circumstances, however, shall Contractor delay its performance of the Work because of an inability to agree on the terms of a Change Order.

ARTICLE VI

INSPECTION AND WARRANTY

SECTION 6.1. Warranty

(a) Contractor warrants (i) it will at all times be fully qualified and capable of performing the Work to complete the Facility according to the terms of this Agreement, (ii) it will perform the Work (other than the portions of the Work described in **Section 6.2**), in accordance with Prudent Utility Practice and in accordance with Applicable Law, **Exhibit A** and as otherwise specified in this Agreement, and that such Work shall be free of Liens or defects in title and free from any defect in workmanship performed by Contractor and its Subcontractors, and (iii) the materials and equipment provided under this Agreement shall be new, unused, undamaged and of good quality when installed, and otherwise consistent and otherwise conform with and in compliance with **Exhibit A** and as otherwise contemplated by this Agreement. If Contractor fails to meet the standards set forth in this Section and Owner gives Contractor notice of any such failure or defect as promptly as practicable after discovery of such failure, but in no event later than the expiration of the Warranty Period, Contractor shall remedy such deficiency so that such Work conforms to those standards. Contractor's costs for such remedy shall be borne solely by Contractor. Contractor's obligation to correct defects and deficiencies shall include labor, parts, transportation, insurance, factory repair and testing, dismantling, re-erecting, re-testing and commissioning. Notwithstanding the foregoing, Contractor makes no warranty with respect to the Owner-Supplied Equipment.

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(b) Contractor shall, for the protection of Owner, use commercially reasonable efforts to obtain from all Subcontractors from which Contractor procures machinery, equipment or materials or Work, warranties and guarantees with respect to such machinery, equipment, materials or Work consistent with the foregoing, which shall be made available to Owner to the full extent of the terms thereof; provided, however, that the inability of Contractor to obtain such warranties or guarantees shall not limit or reduce Contractor's obligations under this Agreement. Unless otherwise specified in the Contract Documents or as otherwise agreed by Owner, all materials and equipment so procured by Contractor shall be new, and both workmanship and material shall be of good quality. Equipment and material which are procured by Contractor, but fail to comply with the requirements of the Contract Documents, shall be removed and replaced with complying equipment and material. However, if the progress of Work is such to make such removal impractical, Owner shall have the right to accept equipment or material and reduce the Contract Price by an amount equivalent to any recovery from the relevant Subcontractor for the difference in its value and the value of complying equipment or material. Contractor shall perform such factory or field tests as are necessary to verify that equipment meets the requirements of the Contract Documents. Contractor shall provide Owner with reasonable notice of such tests and Owner shall be permitted to witness such tests. All Subcontractors', manufacturers', and suppliers' warranties and guaranties, express or implied, respecting any part of the Work and any materials used therein shall be deemed obtained by Contractor for the benefit of Owner without the necessity of separate transfer or assignment thereof. Contractor shall assign such warranties and guaranties to Owner upon the end of the Warranty Period.

(c) All Work repaired or replaced during the Warranty Period shall be rewarranted for an additional year from the date of completion of the repair or replacement; provided, however, in all cases the Warranty Period shall expire two (2) years following Substantial Completion.

(d) If requested by Owner, Contractor will assist Owner in obtaining and administering any other warranties with respect to the Owner-Supplied Equipment and such request shall be treated as an Owner-directed change under **Article V**.

SECTION 6.2. Engineering and Design Warranty

Contractor warrants it will cause to be performed the engineering and design Services, as more particularly described in **Exhibit A** in accordance with Prudent Utility Practice and the current standards of professional care and diligence normally practiced by leading engineering firms in performing services of a similar nature in the United States of America with respect to projects similar to the Facility and otherwise in compliance with **Exhibit A** and the Work will be free from errors or omissions in engineering and design (the "**Design Warranty**"). If within the Warranty Period it is shown that there is an error in the Engineering Services or a

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breach of the Design Warranty as a result of a failure of Contractor or Contractor's engineering Subcontractor to meet those standards and Owner has notified Contractor in writing of any such error within thirty (30) days after the expiration of that period, Contractor promptly shall investigate and determine the cause of the deficiency or defect, promptly correct or cause to be corrected any deficient design that resulted therefrom, promptly issue corrected final as-built drawings, if applicable, and promptly replace or cause to be replaced all equipment and materials associated with the defective design and re-perform all other work necessary to cure the breach of the Design Warranty. All costs incurred by Contractor in performing such corrective services shall be borne solely by Contractor.

SECTION 6.3. Inspection and Testing

(a) All Work shall be subject to reasonable inspection by Owner, or its representatives or consultants, at all times to determine whether or not the Work conforms to the Contract Documents. Contractor shall provide Owner access to the Work wherever located. Owner may visit and inspect the Work, or any part thereof, at any time during normal business hours, and Contractor shall provide safe and proper access for inspection of the Work. Owner may be present at any test to be performed. Contractor shall promptly furnish all reasonable facilities, labor, and materials necessary for the safe and convenient inspection and testing that may be required by Owner. All inspections and tests by Owner shall be performed in such manner as not to unnecessarily interfere, hinder or delay the Work. All such tests and inspections shall not relieve Contractor of its obligations.

(b) If Contractor fails to provide Owner with reasonable opportunity to inspect the Work, and if in the opinion of Owner it is necessary to uncover or dismantle such Work for such inspection, then Contractor shall uncover, dismantle and recover the Work as necessary for such inspection. If such inspection reveals a defect or deficiency in the Work, Contractor's cost of uncovering, dismantling and recovering the Work shall be borne solely by Contractor. If such inspection does not reveal a defect or deficiency in the Work, Contractor shall be entitled to a Change Order pursuant to the terms of **Section 5.3(c)** for the impact to Contractor of uncovering, dismantling and recovering the Work and to the extent of any effect on Contractor's ability to comply with its obligations under this Agreement.

(c) Where Owner has a reasonable belief that there is a defect or deficiency, even though Contractor has given Owner reasonable opportunity to inspect the Work and Owner subsequently requires uncovering, having made no comment during the original inspection, Contractor shall nevertheless uncover, dismantle and recover the Work as necessary for such inspection. If such inspection reveals a defect or deficiency in the Work, Contractor's cost of uncovering, dismantling and recovering the Work shall be borne solely by Contractor. If such inspection does not reveal a defect or deficiency

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in the Work, Contractor shall be entitled to a Change Order pursuant to the terms of **Section 5.3(c)** for the impact to Contractor of uncovering, dismantling and recovering the Work and to the extent of any effect on Contractor's ability to comply with its obligations under this Agreement.

SECTION 6.4. Correction of Defects

If Contractor does not take action to correct any defects or deficiencies for which it is responsible under the Contract Documents within a reasonable time after receipt of Owner's written notice thereof, Owner may, as its sole option, (a) take such corrective action itself or through contract with others the costs of which shall be reimbursed by Contractor; (b) deduct an equitable amount from the Contract Price pursuant to a Change Order for defects or deficiencies in the Work in lieu of correcting Work that was not performed in accordance with the Contract Documents; or (c) exercise any other remedy available under this Agreement, including requiring Contractor to perform the corrective action if the relief under sub-clause (a) or (b) is not practicable.

SECTION 6.5. Limitations

The obligations contained in this **Article VI** govern and supersede any other terms in this Agreement which address warranties, guarantees, or the quality of the Work and are Contractor's sole warranty and guarantee obligations and Owner's exclusive remedies with respect to defects and deficiencies in the Work. Contractor makes no other warranties or guarantees, express or implied, including, but not limited to, warranties of merchantability and fitness for a particular purpose which are expressly disclaimed and waived. Contractor shall have no warranty obligation or liability for defects in the Work caused by normal wear and tear, Owner's improper operation or maintenance of the Facility, alterations that are not in compliance with the guidelines of the original equipment manufacturer, and any event of Force Majeure.

SECTION 6.6. Title

(a) Contractor shall include, as a term of each Subcontract, a warranty that all materials and equipment furnished by its Subcontractors that become part of the Facility or are purchased by Contractor for Owner for the operation, maintenance or repair thereof shall be legally and beneficially owned by the Owner free from any Lien and any defects in title whatsoever, without regard to any expiration of the Warranty Period. Title to all such materials and equipment shall pass to Owner upon delivery to the Site. Notwithstanding passage of title, Contractor shall retain sole care, custody and control of, and retain risk of loss for, such materials and equipment and shall exercise due care with respect thereto in accordance with **Section 2.13**.

(b) In order to protect Owner's interest in all materials and equipment with respect to which title has passed to Owner but which remain in the possession of a third party, Contractor shall follow the directions of Owner with respect to the action to be

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taken by Contractor to maintain Owner's clear title and to protect Owner against claims by other parties with respect thereto, and the costs incurred by Contractor in curing any defect in title shall be borne solely by Contractor; provided, however, Contractor shall be entitled to a Change Order pursuant to the terms of **Section 5.3(c)** for any costs incurred by Contractor at the direction of Owner to protect Owner's title, including, for example, the filing of financing statements.

(c) So long as Owner pays all amounts due Contractor pursuant to this Agreement, Contractor agrees that it shall not establish, and shall not allow its employees, agents or Subcontractors to maintain, any contractor's or laborer's Lien on the Work or the Facility or any part thereof.

(d) Contractor shall not file or permit any Liens on the Work or the Facility without Owner's prior written consent; provided, however, that this clause shall not prohibit Contractor from taking any action allowed under Applicable Law to secure amounts due from Owner under this Agreement. Contractor shall follow the directions of Owner with respect to the action to be taken by Contractor regarding any mechanics' or materialmen's Liens arising from the Work and Contractor shall, if ordered by Owner, as soon as practical discharge or file a bond in lieu of any Lien filed by any Subcontractor against the Facility based on a claim for payment in connection with the Work (provided Owner is in compliance with its payment obligations under this Agreement), and the costs incurred by Contractor in so doing be borne solely by Contractor.

(e) Contractor shall provide prompt notice to Owner of any Lien of which it receives notice.

(f) In the event Contractor fails to discharge or bond over any such encumbrance within a reasonable period or otherwise provide Owner with adequate assurances or security with regard to any such Lien arising in respect of the Work or the Facility, Owner shall have the right to discharge the same and Contractor shall reimburse Owner for the costs incurred to obtain such discharge.

ARTICLE VII

REPRESENTATIVES AND NOTICES

SECTION 7.1. Owner's Representative

Owner appoints the following individual as its "**Owner's Representative**":

Name:	Jim Maynard
Address:	Denton Municipal Electric

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	1659 Spencer Road Denton, TX 76205
E-mail:	jim.maynard@dmepower.com
Phone:	940-349-7182

The Owner's Representative shall be authorized to act on behalf of Owner, with whom Contractor may consult at all reasonable times, and whose instructions, requests, and decisions shall be binding upon Owner as to all matters pertaining to this Agreement and the performance of the Parties hereunder. Without limiting the foregoing, the responsibilities of Owner's Representative shall encompass but not be limited to (1) issuance of instructions, (2) review and inspection of Contractor's Work, (3) rejection of nonconforming Work, (4) determination of when the Work is complete, (5) approval of milestone payments, and (6) approval of certain Change Orders as set forth in **Article V** "Changes in the Work". All communications from Contractor to Owner shall be directed to Owner's Representative and all communications from Owner to Contractor shall be directed from the Owner's Representative. Owner may appoint another person as Owner's Representative at any time by written notice to Contractor from the current Owner's Representative. Only the Owner's Representative may provide binding direction to the Contractor.

SECTION 7.2. Contractor's Project Manager

Contractor shall appoint, subject to the approval of Owner (which shall not be withheld unreasonably) an individual as its "Project Manager" in charge of Contractor's performance and execution of the Work. Contractor shall provide Owner with the Project Manager's address, e-mail address, telephone number, cell phone number and facsimile number. All instructions, requests for Change Orders and all other communications from Owner to the Contractor shall be directed to the Project Manager.

SECTION 7.3. Notices

Except as expressly provided otherwise herein, any formal notice, demand, or request provided for in the Contract Documents shall be in writing and shall be effective upon delivery (electronic transmission to the e-mail address specified above may be done in addition to delivery of a paper copy). Copies of Notices from Owner to Contractor shall also be provided to Contractor's Project Manager".

SECTION 7.4. Changes

Each Party shall provide the other Party with notice when its respective address, contact person, telephone number, e-mail address, or facsimile number changes to which notices are to be sent.

SECTION 7.5. Ordinary Course

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Nothing contained herein shall preclude the transmission of routine invoices or correspondence, messages and information between the Parties by a representative of a Party in the ordinary course of performing their respective obligations under the Contract Documents.

ARTICLE VIII

SITE

SECTION 8.1. Site Investigation

The Site characteristics are described in **Exhibit A**. Contractor represents and warrants that it knows and has carefully reviewed and taken account of all visible and disclosed conditions at the Site, including, the topography and weather patterns at the Site and surrounding area, the management and storage of materials, the availability of labor, construction water, construction electricity, and construction communications, the access routes to the Site, and soil and subsoil (to the extent described in the geotechnical report referred to in **Exhibit A**) characteristics. Contractor's failure to acquaint itself with such general or local conditions or circumstances affecting the Work existing as of the Effective Date of this Agreement shall neither relieve Contractor from the responsibility for successfully performing this Work nor entitle Contractor to an adjustment to the Contract Price or Project Milestone Schedule. Contractor shall be entitled to a Change Order under **Article V** with respect to subsurface conditions as provided in **Section 2.23(j)**.

SECTION 8.2. Lines and Grades

Contractor shall establish construction base lines and benchmarks for the Work. Said base lines and benchmarks, and all stakes or other markers established, shall be preserved by Contractor until their removal is authorized by Owner. Owner may, from time to time, check the layout of Contractor, but such checking shall in no way relieve Contractor of its responsibility for the accuracy of the Work. Contractor shall provide, at the request of Owner, competent personnel to assist in this checking.

SECTION 8.3. Specifications and Drawings

(a) Contractor shall maintain at the Site a copy of the "approved for construction" working specifications and drawings (including "as-built drawings") applicable to the Work with all changes and modifications, and shall at all times give Owner access thereto. Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

(b) **"As-Built" Drawings.** Contractor shall provide and keep at the Site a complete "as-built" record set of drawings (also called **"record drawings"**) that shall

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be updated periodically. The drawings shall reflect exact and actual "as-built" conditions of construction, installation, and erection as it progresses. Where drawings are not adequate to show "as-built" conditions, Contractor shall prepare sketches which delineate the necessary "as-built" information. Contractor shall furnish two (2) sets of all paper "blue-line" prints "approved" drawings for use in accomplishing specified mark-up. Final "as-built" drawings, and a computerized disk of such drawings, with respect to the Facility shall be delivered to Owner by Contractor on or before Final Completion. Contractor represents that the specifications and drawings submitted by it to Owner hereunder are all those customary and necessary for the operation and maintenance of a power generation facility such as the Facility.

SECTION 8.4. Use of Premises

Contractor shall confine the storage of materials and construction equipment in connection with the Work in accordance with all Applicable Law, and Contractor's safety procedures. Contractor shall provide adequate safety barriers, signs, lanterns, and other warning devices and services to properly protect any person having access to or near the areas where Work is being performed at the Site. Contractor shall follow Owner's instructions concerning the location of signs and posters, the time and location of the burning of debris, and any other similar nuisance items.

SECTION 8.5. Cleaning Up

Contractor shall, at all times, keep the Site and other locations on the Site where the Work is performed, including storage areas used by it, in a clean and orderly condition and free from combustible debris and waste materials. Upon completion of the Work, Contractor shall remove all rubbish from and about the premises and restore the Site to its original condition with special respect to ruts and debris of all kinds.

SECTION 8.6. Underground Facilities

Contractor shall be familiar with the requirements of the respective underground facility laws of the State of Texas. Contractor shall identify (through "as-built" drawings as provided by Owner and reasonable inspection) to the extent necessary to perform the Work all underground facilities in the areas on the Site where Work is to be performed, including, but not limited to, gas, electric, telephone, water, drain lines, sewer, and the like. Contractor will take the necessary steps to safeguard these underground facilities. If, however, Contractor encounters underground facilities that could not be reasonably identified through compliance with underground facilities laws, review of any Owner-provided as-built drawings, or Site walk-downs, Contractor shall be entitled to a Change. With respect to areas outside of the Site, Contractor may rely on third parties, as necessary and appropriate, and in compliance with Applicable Laws. Contractor shall notify the Owner's Representative, who will file a report of accident with the relevant local official at the time of any damage.

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SECTION 8.7. Other Contracts

Owner may undertake or award other contracts for additional work at or near the Site. The Parties shall coordinate the performance of any such additional work to avoid any adverse impact on the performance by Contractor of its obligations under this Agreement.

ARTICLE IX

COMPLETION OF THE WORK

SECTION 9.1. Mechanical Completion

(a) Mechanical Completion shall occur when the following requirements have been satisfied:

(i) Contractor has constructed and installed all materials, equipment (including Owner-Supplied Equipment), components and systems necessary to begin commissioning of Owner Supplied Equipment (except for completion of minor portions of the Work such as painting, final grading, final insulation, and any other portion of the Work not affecting the reliability, dependability, testing, operability, safety, and mechanical and electrical integrity of the Facility) in accordance with the Contract;

(ii) Contractor has made available for inspection by Owner all systems necessary to begin Commissioning in accordance with procedures mutually agreed to at the time by Contractor and Owner and set forth in the relevant Equipment Contracts;

(iii) the Work with respect to the Facility is mechanically and electrically sound, all systems necessary to begin commissioning of Owner Supplied Equipment have been flushed, cleaned out and filled as necessary and all required pre-operations checking and testing (including construction, hydrostatic, electrical, control and flushing testing for such purpose) have been completed satisfactorily;

(iv) the Work is ready to allow start-up testing, preliminary operation and commissioning of the Facility; and

(v) all Facility systems and subsystems have been installed, the equipment and systems included therein (except as provided in **Section 9.1(a)(i)**) can be operated in a manner that does not void any Subcontractor or system warranty and Contractor has made the Facility available for synchronization;

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(b) When Contractor believes that the requirements of Mechanical Completion have been met, Contractor shall issue a notice of Mechanical Completion to Owner. Within five (5) Business Days after receiving such notice of Mechanical Completion, Owner shall advise Contractor, in writing, with reasonable precision, of any known reason(s) that Contractor has not met the criteria for Mechanical Completion. If Owner advises of any such reason(s), Contractor shall then take appropriate corrective action and again notify Owner, in writing, that the Facility has achieved Mechanical Completion. Owner shall have five (5) Business Days after receipt of such notification to advise Contractor of any remaining known reason(s) under the preceding paragraph why Contractor has not met the criteria for Mechanical Completion. This process shall be repeated as necessary until Owner agrees that no such reasons remain and Mechanical Completion is achieved. If Owner fails to notify Contractor of any such known reasons within the allotted time, the Facility shall be deemed to have achieved Mechanical Completion as of the date of such notification. Otherwise, subject to Contractor's right to dispute Owner's assertion that Mechanical Completion has not been achieved, Mechanical Completion shall not be achieved until Owner and Contractor agree that all of the criteria for Mechanical Completion have been achieved. If Owner does agree that the Contractor has met the requirements of Mechanical Completion then the date of Mechanical Completion shall as per the date of the Contractor's notice.

SECTION 9.2. Substantial Completion

(a) Substantial Completion shall occur on the date on which:

- (i) the conditions for Mechanical Completion have been satisfied;
- (ii) all services, materials and equipment comprising the Facility have been completed in accordance with the requirements of this Agreement (other than Punch List items);
- (iii) the Performance Tests have been satisfactorily completed by Equipment Contractor with respect to the Facility and by Contractor with respect to the Performance Tests for Station Auxiliary Load and that Contractor's performance of the Work does not prevent the Facility from achieving the Equipment Contractor-minimum performance guarantee levels;
- (iv) the Punch List has been provided to Owner as set forth in **Section**

9.3.

(b) Owner and Owner's Representative shall have the right and opportunity to be present and observe the Performance Tests and to inspect and validate all meters, meter readings and other pertinent data necessary to verify the results of the Performance Tests. Contractor and Owner shall coordinate such observation, inspection and

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validation so as not to interfere with the Performance Tests yet provide for a verifiable result.

(c) When Contractor believes it has achieved Substantial Completion, Contractor shall tender a certificate of Substantial Completion to Owner in substantially the form attached hereto as **Exhibit D-2**. Owner shall accept or reject Contractor's certification in writing within three (3) Business Days after receipt of Contractor's tender. If Owner fails to notify Contractor of any such known reasons within the allotted time, Substantial Completion shall be deemed to have been achieved as of the date of the tender of the certificate. If Owner rejects Contractor's certification, Owner shall identify its reasons for rejection in detail sufficient for verification and thereafter Contractor shall:

(i) take prompt corrective action, as necessary, to achieve the requirements of Substantial Completion and then submit a new certification to Owner as provided for above; or

(ii) disagree with Owner's reasons for such rejection, promptly notify Owner, and the Parties shall attempt to resolve the disagreement without delay. If the disagreement cannot be resolved within five (5) Business Days, then Contractor may seek a determination whether or not Substantial Completion has been achieved under **Article XI** "Dispute Resolution".

(d) The date of Substantial Completion shall be the date of the relevant notice that Owner accepts or is deemed to have accepted under the procedures outlined in **Section 9.2(c)**.

SECTION 9.3. Punch List

At the time of submitting a certificate of Substantial Completion, Contractor shall prepare and submit to Owner a Punch List for the Facility and an estimate of costs necessary to complete the Punch List. Owner shall have seven (7) Business Days from receipt of said Punch List or update to provide any comments to the Punch List. The Parties shall review the Punch List and discuss the items to be included in a mutually agreed Punch List, with an estimate of the cost to complete the Punch List items; provided, however, that pending resolution of any dispute with respect to the Punch List, Owner may withhold from any payment of the Contract Price due on Substantial Completion, draw on the Retainage or, if applicable, draw on the Performance Security, in an amount equal to two hundred percent (200%) of the estimated cost of completing the Punch List items of work. Owner shall provide Contractor with reasonable access to the Facility to complete the Punch List. Contractor shall diligently pursue completion of the Punch List within sixty (60) days following Substantial Completion and shall notify Owner in writing upon Contractor's determination that Punch List Work is complete. Owner shall have seven (7) Business Days to accept or reject Contractor's determination that the Punch List Work is complete.

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If Owner rejects Contractor's determination, then Contractor may seek a determination whether or not the Punch List Work is complete under **Article XI** "Dispute Resolution".

SECTION 9.4. Remedy of Failure to Achieve Equipment Contract Performance Guarantees

Subject to the provisions of **Article V**, during the one hundred twenty (120) day period following the relevant date of Substantial Completion, Owner may direct Contractor to (i) provide support to the Equipment Contractor in the performance of any remedial work on the Owner-Supplied Equipment by the Equipment Contractor to achieve the performance guarantees under the Equipment Contract or (ii) undertake remedial action with respect to the Facility other than the Owner-Supplied Equipment to achieve such performance guarantees.

SECTION 9.5. Final Completion

(a) Final Completion with respect to the Facility shall occur on the date on which:

- (i) Mechanical Completion has occurred;
- (ii) Substantial Completion has occurred;
- (iii) all Punch List items have been completed;
- (iv) the Performance Tests have all been completed;
- (v) Contractor has paid all undisputed Delay Damages as set forth in **Section 9.7**;
- (vi) Contractor has executed and delivered to Owner Contractor's final waiver of liens in the form attached hereto as **Exhibit C-2** and final waivers of liens (in the form attached hereto as **Exhibit C-2**) executed by all Subcontractors with subcontracts having a value, individually or in the aggregate, in excess of one million dollars (\$1,000,000) and Contractor's certification that, to the best of Contractor's knowledge after reasonable inquiry, (1) all indebtedness, including liens, with respect to or in connection with the Work has been paid and (2) all claims for payment for labor and materials for which Contractor is responsible in connection with the construction of the Facility have been paid or satisfied; and/or bonded off;
- (vii) all Final As-built Drawings and Documentation have been delivered by Contractor to Owner; and

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(viii) Contractor shall have reimbursed Owner for or shall have, without cost to Owner, ordered or replaced any of Owner's spare parts used to perform the Work.

(b) When Contractor believes it has achieved Final Completion of the Facility, Contractor shall tender a certificate of Final Completion to Owner substantially in the form attached hereto as **Exhibit D-3**. Owner shall accept or reject Contractor's determination of Final Completion in writing within five (5) Business Days after receipt of Contractor's tender. If Owner fails to notify Contractor of any such known reasons within the allotted time, the Facility shall be deemed to have achieved Final Completion as of the date of the tender of the certificate. If Owner rejects Contractor's determination of Final Completion, Owner shall identify its reasons for rejection in detail sufficient for verification and thereafter Contractor shall:

(i) take prompt corrective action, as necessary, to achieve the requirements for Final Completion, and then submit a new determination of Final Completion to Owner as provided for above; or

(ii) disagree with Owner's reasons for such rejection, promptly notify Owner, and the Parties shall attempt to resolve the disagreement without delay. If the disagreement cannot be resolved within five (5) Business Days, then Contractor may seek a determination whether or not Final Completion has been achieved under **Article XI "Dispute Resolution"**.

SECTION 9.6. Schedule Guarantee and Delay Damages

Contractor shall perform the Work so that Substantial Completion is achieved no later than the Contract Completion Date. Contractor agrees that if Substantial Completion is not achieved by the Contract Completion Date because of Contractor's unexcused performance failure, Contractor shall pay Delay Damages to Owner until Substantial Completion (or a percent thereof if there is only partial Substantial Completion of the Facility) occurs. For clarification of partial Substantial Completion, if [REDACTED] units achieve Substantial Completion, Contractor would only be responsible for [REDACTED] of the daily Delay Damage. Subject to Owner's rights under Article X, the receipt by Owner of Delay Damages shall be Owner's sole and exclusive remedy for a failure to achieve Substantial Completion by the Contract Completion Date.

SECTION 9.7. Payment of Delay Damages

Contractor shall pay Delay Damages in arrears every fifteen (15) days within seven (7) days of receipt of an invoice from Owner delivered after the end of such fifteen (15) day period. Owner's invoice for Delay Damages shall specify the amount due and shall include reasonable data and calculations on the basis of which such amount has been determined.

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SECTION 9.8. Payment of Early Substantial Completion

Owner shall make payment for Early Substantial Completion within seven (7) days of receipt of an invoice from Contractor. Contractor's invoice for payment of Early Substantial Completion shall specify the amount due and shall include reasonable data and calculations on the basis of which such amount has been determined.

ARTICLE X

DEFAULT AND TERMINATION

SECTION 10.1. Contractor Default

Contractor shall be deemed to be in default if it at any time during the performance of the Work Contractor shall:

(a) Materially fail to prosecute the Work or any portion thereof with sufficient diligence or otherwise commit a substantial breach of any material provision of this Agreement and Contractor does not commence and diligently proceed to cure such failure or breach within thirty (30) calendar days following delivery of a notice from Owner to Contractor to remedy such failure or breach or, if a cure of such failure or breach cannot be effected within such thirty (30) day period, Contractor has commenced such cure within such period and diligently pursues such cure thereafter;

(b) Become insolvent or make a general assignment for the benefit of its creditors;

(c) File a petition in bankruptcy or have a petition in bankruptcy filed against it or an attachment or execution levied upon any of its property used hereunder, or have a receiver for its business appointed on account of the condition of such business or of insolvency;

(d) Materially disregard or fail to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction and Contractor does not commence and diligently proceed to cure such failure within twenty (20) calendar days following delivery of a notice from Owner to Contractor to remedy such failure or, if such cure cannot be effected within such twenty (20) day period, Contractor has commenced such cure within such period and diligently pursues such cure thereafter;

(e) Attempt to assign this Agreement without obtaining Owner's prior consent;

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(f) Fail to make an undisputed payment to Owner when due hereunder and Contractor does not cure such failure within ten (10) days following delivery of a notice from Owner to Contractor to remedy such failure.

(g) Failure to maintain insurance coverage required of Contractor as specified in **Article XIV** of this Agreement.

(h) The issuer of the Contractor Payment & Performance Bond disavows its obligations under the Contractor Payment & Performance Bond, respectively, the Contractor Payment & Performance Bond ceases to be in full force and effect for the duration required under this Agreement.

SECTION 10.2. Right to Terminate for Cause

If at any time Contractor shall be deemed in default pursuant to **Section 10.1** "Contractor Default", Owner may elect to terminate this Agreement in accordance with **Section 10.3** "Termination by Owner for Cause" and Owner may draw on the Retainage or, if applicable, the Performance Security for any amounts due from but not paid by Contractor under this Agreement.

SECTION 10.3. Termination by Owner for Cause

(a) If Owner elects to terminate this Agreement due to Contractor's default under the terms of **Sections 10.1** and **10.2**, Owner shall give written notice of termination to Contractor specifying the date of termination and in such event:

(i) Owner, without incurring any liability to Contractor, shall have the right to have the Work finished either by itself, its affiliates or by a third party contractor. In such event, Owner shall not be liable to make further payments to Contractor until the Work is completed and Contractor shall be liable to Owner for costs incurred by Owner in accordance with Prudent Utility Practices in completing the Work, including without limitation, costs of accelerated or expedited construction methods actually performed in an attempt to achieve Substantial Completion by the Contract Completion Date, and/or to mitigate any delay by Contractor, and costs for administering any subcontracts associated with the termination, but only to the extent such foregoing costs exceed the portion of the Contract Price that, absent such termination, remained to be paid to Contractor under this Agreement; and

(ii) upon termination of the Work pursuant to this **Section 10.3**, Contractor shall promptly submit to Owner an accounting of Contractor's costs for the Work performed prior to the date of termination, which shall not exceed the sum of all milestone and other payments paid or owed as of the date of termination,

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plus a portion of the milestone payment immediately next due after the date of termination corresponding to that portion of the Work which has been satisfactorily completed but not previously invoiced. Where Owner does not exercise its rights under **Section 10.3(a)(i)** to complete the Work, Owner shall pay Contractor, not later than thirty (30) days after receipt of Contractor's accounting of costs, Contractor's costs of the Work, less the sum of all milestone payments of the Contract Price and other payments previously paid. Where Owner completes the Work for less than the Contract Price, Owner shall pay Contractor, not later than thirty (30) Days after the Work is completed, Contractor's costs of the Work, less the sum of all milestone payments and other payments previously paid.

(b) Termination of the Work in accordance with this Article shall not relieve Contractor of its responsibilities for Work performed.

(c) Delay Damages and Performance Damages, if any, shall cease to accrue as of the date of termination.

(d) Nothing in these Contract Documents with respect to Delay Damages or any payment of any of the same to Owner shall be construed as limiting or relieving (a) Contractor's obligations generally to achieve its Project Milestones, (b) warranties granted under these Contract Documents, or (c) Owner's remedies for Contractor's default as provided herein.

SECTION 10.4. Termination by Owner for Convenience

(a) Owner may, upon thirty (30) calendar days' advance written notice to Contractor, suspend, abandon, or terminate the Work, or any portion thereof, and terminate this Agreement, for any reason whatsoever, including for the convenience of Owner without regard to whether or not Contractor has defaulted or failed to comply with the provisions of the Contract Documents, except for the purpose of substituting another contractor in place of the Contractor.

(b) If Owner terminates the Work, or any portion thereof for convenience, Contractor shall be entitled to amounts paid previously or invoiced and unpaid to Contractor hereunder and in addition Owner shall pay, without duplication of the milestone or other payments paid previously, Contractor for all its costs for the parts of the Work done prior to the effective date of termination, including materials provided, plus any Subcontractor or vendor cancellation costs, plus an amount for the Contractor's substantiated, reasonable direct costs plus reasonable overhead and profit incurred in preparation for the parts of the Work not yet performed and in demobilization.

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(c) Contractor shall not be entitled to any other costs or damages whatsoever arising out of Contractor's performance of the Work and the termination by Owner for convenience.

SECTION 10.5. Stopping Work

(a) When Owner terminates the Work in accordance with **Section 10.3** "Termination by Owner for Cause" or **10.4** "Termination by Owner for Convenience", Contractor shall take the actions set forth below.

(b) Unless Owner directs otherwise, after receipt of a written notice of termination for either cause or convenience, Contractor shall promptly:

(i) stop performing Work on the date and as specified in the notice of termination;

(ii) place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work that is not terminated;

(iii) cancel all orders and subcontracts, upon terms acceptable to Owner, to the extent that they relate to the performance of Work terminated;

(iv) assign to Owner all of the right, title, and interest of Contractor in all orders and subcontracts;

(v) deliver completed Work to Owner and take such action as may be necessary or as directed by Owner to preserve and protect the Work, Site, and any other property related to the Work in the possession of Contractor in which Owner has an interest; and

(vi) continue performance only to the extent not terminated.

(c) In the case of any termination, Contractor shall proceed with the orderly demobilization and closeout of the Work.

SECTION 10.6. Suspension of the Work

(a) Owner may, for any reason, at any time suspend the carrying out of the Work or any part thereof by advance written notice to Contractor. Any such notice shall specify the date of suspension, the expected duration of the suspension and any other information relevant to the scope of work being suspended. Whereupon, Contractor shall suspend the carrying out of the Work or any part thereof for such time or times and

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in such manner as Owner may require. During any such suspension, Contractor shall properly protect and secure the Work in such manner as Owner may reasonably require. Unless otherwise instructed by Owner, Contractor shall, during any such suspension, maintain its staff and labor on or near the Site and otherwise be ready to proceed with the Work upon receipt of Owner's further instructions. Should the Work be so suspended, Owner and Contractor shall negotiate a Change Order to address the impact of any suspension by Owner hereunder on the Contract Price, the Project Milestone Schedule and Contract Completion Date in accordance with **Article V** "Changes in the Work" of the Agreement. When a suspension equals or exceeds one hundred eighty (180) days in the aggregate, Contractor may elect to treat such suspension as a Termination for Convenience of Owner pursuant to **Section 10.4**.

SECTION 10.7. Owner Default

Owner shall be deemed to be in default if at any time during the performance of this Agreement:

(a) Owner commits a breach or default of any of its covenants or obligations hereunder and fails to commence proceedings to remedy such breach or default within ten (10) Business Days after written notice thereof from Contractor and thereafter diligently proceeds with such remedy;

(b) Owner becomes insolvent or makes a general assignment for the benefit of its creditors;

(c) Owner files a petition in bankruptcy or has a petition in bankruptcy filed against it or an attachment or execution levied upon any of its property used hereunder, or has a receiver for its business appointed on account of the condition of such business or of insolvency;

(d) Owner materially disregards or fails to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction and Owner does not commence and diligently proceed to cure such failure within fifteen (15) calendar days following delivery of a notice from Contractor to Owner to remedy such failure or, if such cure cannot be effected within such fifteen (15) day period, Owner has commenced such cure within such period and diligently pursues such cure thereafter; or

(e) Owner fails to make an undisputed payment to Contractor when due hereunder and Owner does not cure such failure within ten (10) days following delivery of a notice from Contractor to Owner to remedy such failure.

In the event of an Owner default, Contractor may, at its option, suspend performance or terminate this Agreement ten (10) Business Days following notice thereof to Owner; provided, however, that

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Contractor may, at its option, suspend performance of this Agreement ten (10) Business Days following notice to Owner of a failure by Owner to make an undisputed payment to Contractor when due hereunder if Owner has not cured such non-payment within such notice period. Should Contractor so suspend or terminate this Agreement, it shall be paid for all costs incurred and Work performed to the date of suspension/termination, including any cancellation charges by Subcontractors, and the cost of all standby and demobilization/remobilization expenses pursuant to the provisions of **Section 10.4**.

SECTION 10.8. Delivery of Documents

Upon the termination of this Agreement, in whole or in part, pursuant to either **Section 10.3** "Termination by Owner for Cause", **10.4** "Termination by Owner for Convenience", or **10.7** "Owner Default", Contractor shall execute and deliver all such instruments and take all such steps, including assignment of its contractual rights with third parties, as may be required to fully vest in Owner all right, title, and interest in all Work, subject to **Section 15.1**, including, but not limited to, all plans, specifications, deliverables, materials, and equipment procured and all contractual rights, and/or cancel or terminate, at Owner's option, such of those contractual rights including, but not limited to, subcontracts and purchase orders as may be requested in writing by Owner.

ARTICLE XI

DISPUTE RESOLUTION

SECTION 11.1. Dispute Resolution

(a) **Dispute.** Any dispute, controversy or claim involving the Parties arising out of or relating to this Agreement or any related contract or the validity, interpretation, breach or termination hereof or thereof (a "**Dispute**"), including claims seeking redress or asserting rights under Applicable Law, shall be resolved in accordance with the procedures set forth in this **Article XI**. Until completion of such procedures, no Party may take any action not contemplated herein to force a resolution of the Dispute by any judicial, arbitral or similar process, except to the limited extent necessary to avoid expiration of a claim that could eventually be permitted hereby or as provided in **Section 11.3**.

(b) **Discovery Exemption.** All communications between the Parties or their respective representatives in connection with the attempted resolution of any Dispute shall be deemed to have been delivered in furtherance of a Dispute settlement and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as an admission or otherwise), in any proceeding for the resolution of the Dispute.

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SECTION 11.2. Consideration by Senior Management

In the event a Dispute cannot be resolved by the Contractor's Project Manager and Owner's Representative, either Party may, by notice to the other Party, request referral to the senior management of Owner and Contractor for their consideration. Such request shall be accompanied by a written statement of the Dispute and of each Party's position. Within ten (10) days following such request, the non-requesting Party shall either concur in such statement or prepare its own, and such statement shall be delivered to such senior management. Such senior management shall meet in person or by telephone within ten (10) days thereafter to seek a resolution. In the event no resolution is reached by the expiration of thirty (30) days following the referral request, then either Party may submit such Dispute to resolution as further provided in **Section 11.3** by notice to the other Party ("**Mediation Notice**").

SECTION 11.3. Mediation

(a) Any Dispute arising out of or relating to this Agreement or the breach thereof which has not been resolved through negotiation in accordance with the procedures set forth in Section 11.2 shall be submitted to non-binding mediation. The mediation shall be held in Dallas, Texas. The mediation shall be conducted before a single independent mediator mutually agreeable to both Parties with significant experience in mediating disputes arising from commercial contracts for the engineering, supply and construction of electric power plants. If the Parties cannot, after reasonable good faith efforts, select a mediator within ten (10) days of submitting the matter to mediation or if in any case the Parties cannot resolve the Dispute after fifteen (15) consecutive business days of mediation, then either Party may bring any action available at law in court in accordance with this Article 11. The Parties shall use commercially reasonable efforts to conclude the mediation as soon as practicable. The decision of the mediator shall be in writing and shall give reasons for the decisions reached by the mediator, but it shall not be binding on the Parties. Prior to commencement of the mediation, the mediator shall be required to enter into a confidentiality agreement to keep the information disclosed during mediation and the occurrence of the mediation confidential.

SECTION 11.4. Jurisdiction

Each of the Parties expressly irrevocably agrees that any legal action or proceeding with respect to this Agreement or the transactions contemplated hereby shall be brought and determined in U.S. federal court in the Eastern District of Texas and each Party hereby irrevocably submits to the exclusive jurisdiction of such court in respect of any such action or proceeding and waives any defense of forum non conveniens, provided, however, that the foregoing shall not limit the rights of either Party to obtain execution or enforcement of judgment in any other jurisdiction.

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The Parties further agree that, to the extent permitted by Law, a final and unappealable judgment against a Party from any action or proceeding contemplated above in this Section 11.4 shall be conclusive and may be enforced in any other jurisdiction within or outside the United States of America by suit on the judgment, a certified copy of which shall be conclusive evidence of the amount of such judgment. THE PARTIES HERETO AGREE THAT THEY HEREBY IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION TO ENFORCE OR INTERPRET THE PROVISIONS OF THIS AGREEMENT.

ARTICLE XII

INDEMNITY AND LIMITATIONS OF LIABILITY

SECTION 12.1. General Liability

(a) **CONTRACTOR ON BEHALF OF ITSELF, AND ITS AFFILIATES, SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER, OWNER'S REPRESENTATIVE, ANY LENDER PROVIDING OWNER WITH FINANCING FOR THE FACILITY AND THEIR RESPECTIVE SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, EXPENSES, AND CLAIMS FOR THIRD-PARTY PERSONAL INJURY, INCLUDING INJURIES TO EMPLOYEES OF CONTRACTOR OR EMPLOYEES OF SUBCONTRACTOR OR THIRD-PARTY PROPERTY DAMAGE (EXCEPT TO THE WORK) TO THE EXTENT CAUSED BY CONTRACTOR'S OR ITS SUBCONTRACTORS' NEGLIGENT ACTS OR OMISSIONS IN THE PERFORMANCE OF THE WORK.**

(b) [not used].

SECTION 12.2. Liability for Owner Property

The Parties agree that builder's all-risk property insurance, which is to be provided pursuant to **Section 14.4(a)**, will cover risks, damage and losses to the Work prior to Substantial Completion. Notwithstanding **Section 2.13**, after Substantial Completion, (a) Owner's property insurance, which is to be provided pursuant to **Section 14.4(b)**, will cover all risks, damage and, on industry standard forms, losses to property owned by or in the custody of Owner; (b) deductibles for losses covered under the property coverage and non-covered losses shall be paid by Owner, unless such loss is caused by the negligence of Contractor and its Subcontractors, in which case Contractor shall be liable for applicable deductibles not to exceed [REDACTED] each occurrence; and (c) except as otherwise provided in clause (b), Owner hereby releases Contractor and its Subcontractors from any liability for property damage arising from the ownership, use or operation of the Facility or any part thereof, subsequent to the transfer of care, custody and control to Owner.

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SECTION 12.3. Trespass

Contractor shall be solely responsible for any act of trespass or any injury to adjacent third party property resulting from Contractor's performance of the Work. Contractor shall be liable for any claims that may arise from Contractor's deposit of debris of any kind upon adjacent property.

SECTION 12.4. Intellectual Property Rights Infringement Indemnity

Contractor warrants that none of the Work performed by Contractor, or the documents, goods or equipment produced, designed, fabricated, or assembled by Contractor (which excludes Owner-Supplied Equipment) pursuant to this Agreement infringe upon or violate any North American patent, copyright, trade secret, or any other intellectual or proprietary rights of any third party. If any third party makes a claim or commences a proceeding against Owner regarding the Work, alleging such an infringement or violation, then subject to this **Section 12.4**, Contractor shall indemnify, defend and save harmless Owner, its directors, officers, employees, agents and affiliates from and against all damages and costs incurred by or awarded against Owner (including court costs and reasonable attorneys' fees). Contractor agrees to include, as a term or condition of each purchase order employed by it in the performance of the Work, a patent indemnification provision extending from the Subcontractor under such purchase order to Owner and Contractor and to render such assistance to Owner as may be reasonably required, to enforce the terms of such indemnification by such Subcontractors. Owner will notify Contractor if any such claim is made or proceeding is commenced. Owner may, at its option, be represented by separate legal counsel in any such claim or proceeding; however, Contractor shall not be obligated to reimburse Owner the costs and expenses incurred by Owner in being so represented. If the use of any of the Work, or the results of such Work, or documents, goods, or equipment, or any part thereof, furnished under this Agreement in connection with the Work is held in any such claim or proceeding to constitute an infringement and/or is enjoined, whether temporarily or permanently, Contractor shall, at its sole cost and expense, do any of the following (the selection of which shall be at the sole discretion of the Contractor):

- (a) Procure for Owner the right to use the Work or results of such Work or such documents, goods and equipment; or
- (b) Replace the Work or the results of such Work or such documents, goods, or equipment with non-infringing Work, documents, goods or equipment having the equivalent functionality as the infringing or allegedly infringing Work, documents, goods or equipment; or
- (c) Modify such Work, documents, goods, or equipment so as to make them non-infringing, but equivalent in functionality.

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SECTION 12.5. Owner's Use of Drawings and Specifications

Drawings and specifications prepared by Contractor pursuant to this Agreement, which Owner may require Contractor to supply in accordance with the Agreement, shall become the property of Owner upon payment, and Owner agrees to use the information contained therein solely for the purpose of facilitating or completing construction, maintenance, operation, modification and repair of the Facility (and not for duplication of the Facility, in whole or part) and agrees not to disclose the same or information contained therein to third parties (other than employees, agents or consultants of Owner) for any other purpose, without written notification to Contractor. In the event Owner uses such information for any other purpose, Owner agrees to release, defend, indemnify and hold Contractor harmless from and against any liability arising out of claims or suits asserted against Contractor even though such claims or suits may be based on allegations of negligence of Contractor. Nothing herein shall be construed as limiting Contractor's ownership of all rights to use its basic know-how, experience and skills, whether or not acquired during performance of the Work or to perform any engineering design or other Work for any other party.

SECTION 12.6. Consequential Damages

Neither Owner nor Contractor and its Subcontractors shall not be held responsible to the other for consequential, incidental, special, exemplary, punitive, or indirect damages, including, without limitation, liability for loss of production or use of the Facility, or loss of profits or revenue, interest, product or business interruption, increased costs of operations and maintenance or staffing needs, however the same may be caused. The waiver in this Section does not apply to indemnity obligations for any third party claims concerning damage to property, bodily injury or death for which either Party owes the other an indemnity under **Section 12.1** or to any liquidated Delay Damages or liquidated Performance Damages.

SECTION 12.7. Compliance with Laws

(a) Contractor on behalf of itself, and its affiliates, successors, assigns, officers, directors, employees, and agents, agrees to indemnify Owner, Owner's Representative, and their respective successors, assigns, officers, directors, employees, and agents, from and against any and all losses, expenses, and damages, including any fines or penalties, that arise from or out of Contractor's or its Subcontractors' failure to comply with Applicable Law; provided, however, Contractor's sole obligations, if any, with respect to emissions and noise related to operation of the facility shall be as provided in **Exhibit K** (Guarantees and Performance Tests).

(b) Owner on behalf of itself, and its affiliates, successors, assigns, officers, directors, employees, and agents, agrees to indemnify Contractor and its Subcontractors, and their respective successors, assigns, officers, directors, employees, and agents, from

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and against any and all losses, expenses, and damages, including any fines or penalties, that arise from or out of Owner's failure to comply with Applicable Law.

SECTION 12.8. Limitation of Liability

Except for (i) liability arising out of the fraud, gross negligence, willful misconduct of Contractor or (iii) liability arising out of Contractor's indemnity obligations as contemplated by **Section 12.1, Section 12.4, or Section 13.4(b)** Contractor's aggregate liability shall not exceed [REDACTED] of the Contract Price; provided, that the aggregate liability of Contractor for any Delay Damages shall be limited in the aggregate to [REDACTED] of the Contract Price.

ARTICLE XIII

DRUG, ALCOHOL, SAFETY AND HAZARDOUS MATERIALS

SECTION 13.1. Drug and Alcohol Policy

During the term of the Agreement, Contractor shall have in place and comply with a drug and alcohol policy. Contractor's policy shall include: reasonable testing procedures. Further, Contractor is responsible for testing and other related costs, for providing required reports to any government agency, and, at Owner's request, Contractor shall make its policy and drug/alcohol testing statistics available to Owner's drug and alcohol testing program administrators as identified by Owner from time to time.

SECTION 13.2. Safety Materials

Contractor agrees and warrants that all materials supplied by Contractor and articles and/or Work provided by Contractor in connection with the Work meet the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970 and, if applicable, the Federal Motor Carrier Safety Act, or under any Applicable Law of a state in lieu thereof, for the protection of employees who will be affected by the use or performance of said articles and/or Work. Contractor shall comply with all federal, state, and local rules and regulations governing safety and the safe operation of commercial motor vehicles and the safe performance of the Work. Contractor's safety procedures and guidelines will be prepared and submitted to Owner thirty (30) days after the Effective Date.

SECTION 13.3. Safety Precautions

Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs concerning the performance of the Work in accordance with all Applicable Laws. Contractor shall provide and be directly responsible for its own safety program for its employees and for the safe operation of its own vehicles and equipment. Contractor shall

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furnish Owner with a copy of its safety manual which has been compiled and designed for the Facility. Contractor shall comply with its own safety manual.

(a) In carrying out its responsibilities according to the Contract Documents, Contractor shall (i) protect the lives and health of employees performing the Work and other persons who may be affected by the Work, and shall erect and maintain all reasonable safeguards for such safety and protection; (ii) prevent damage to materials, supplies, and equipment whether on-site or stored off-site; (iii) prevent damage to other property at the Site or adjacent thereto; and (iv) notify Owner's Representative when prosecution of the Work may affect owners of adjacent properties and utilities.

(b) In reporting an accident involving Contractor and the Work, the requirements of **Section 2.12(c)** shall apply.

(c) In the event Owner has a reasonable objection to any employee of Contractor, Contractor shall investigate and take appropriate disciplinary action, up to and including removal of the employee from Owner's premises.

SECTION 13.4. Hazardous Materials

(a) **Hazardous Materials to Be Brought onto Site.** Contractor shall not, nor shall it permit or allow any Subcontractor to, bring Hazardous Materials onto the Site and shall bear all responsibility and liability for such materials; provided, however, that Contractor and its Subcontractors may bring onto the Site such Hazardous Materials as are necessary to perform the Work so long as the same is done in compliance with Applicable Laws and Contractor shall remain responsible for the management, transportation, treatment and disposal of all such Hazardous Materials. Contractor shall provide Owner's Representative (or his designated representative) the following information with respect to any Hazardous Materials: (i) material safety data sheet ("MSDS"), (ii) quantity (volume/mass), (iii) length of time on Site, (iv) container type, and (v) disposal location if disposed or otherwise managed. Contractor shall require all Subcontractors and suppliers to provide the information required under this sub-article to Owner prior to bringing any Hazardous Materials to the Site. Contractor shall exclude the use of lead paint and material containing asbestos and Contractor shall minimize the use of acetone and chlorinated solvents and similar substances at the Site, and shall require all Subcontractors and suppliers to adhere to the same restrictions.

(b) **INDEMNIFICATION. CONTRACTOR HEREBY INDEMNIFIES OWNER FROM ANY AND ALL LOSS, DAMAGE, COST, OR EXPENSE TO THE EXTENT CAUSED BY THE HANDLING, STORAGE, REMOVAL, REMEDIATION, OR OTHER APPROPRIATE ACTION (IF ANY), WITH RESPECT TO ANY HAZARDOUS MATERIALS THAT (I) WERE BROUGHT OR CAUSED TO BE BROUGHT ON THE SITE BY CONTRACTOR OR ANY**

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SUBCONTRACTOR AND RELEASED TO THE ENVIRONMENT BY ANY ACT OR OMISSION OF CONTRACTOR OR ANY SUBCONTRACTOR IN THE COURSE OF PERFORMANCE OF THE WORK OR (II) WERE EXISTING AT THE SITE AS OF THE EFFECTIVE DATE TO THE EXTENT THE LOSS, LIABILITY, CLAIM, CAUSE OF ACTION, SUIT, DAMAGE, COST, ATTORNEYS' FEES, OR EXPENSE ARISES FROM A NEGLIGENT ACT OR OMISSION RESULTING IN A RELEASE BY CONTRACTOR OR ANY SUBCONTRACTOR OF HAZARDOUS MATERIALS IDENTIFIED IN THE CONTRACT DOCUMENTS AS EXISTING AT THE SITE WITH REGARD TO LOCATION, QUANTITY, AND NATURE, SUCH THAT A REASONABLE CONTRACTOR OR SUBCONTRACTOR WITH THE SAME INFORMATION WOULD HAVE ACTED DIFFERENTLY THAN CONTRACTOR OR SUBCONTRACTOR AND WOULD HAVE AVOIDED SUCH RELEASE (PROVIDED, THAT, FOR THE AVOIDANCE OF DOUBT, CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION SHALL APPLY ONLY TO THE RELEASE RESULTING FROM SUCH NEGLIGENT ACTS OR OMISSIONS AND NOT FOR THE PRE-EXISTING CONDITION OF THE SITE), OR (III) WERE THE RESULT OF ANY INTENTIONALLY WRONGFUL OR UNLAWFUL ACT OR OMISSION OF CONTRACTOR OR ANY SUBCONTRACTOR.

(c) **Discovery of Hazardous Materials at Site.** If, during the course of the performance of the Work, Contractor or any Subcontractor discovers, or reasonably believes it has discovered in, on or under any part of the Site, any Hazardous Materials (other than Hazardous Materials that Contractor or a Subcontractor has brought onto the Site, generated or produced by Contractor (or its Subcontractors) from materials brought to the Site by Contractor (or its Subcontractors)), Contractor shall promptly advise Owner and shall follow Owner's direction with respect to such Hazardous Materials. Owner shall undertake the abatement and disposal of any Hazardous Materials existing at the Site which are encountered by Contractor in the performance of the Work, and dispose of waste generated by the Facility during start-up, testing and operation of the Facility.

(i) Contractor shall be entitled to a Change Order for Contractor's costs and schedule impacts resulting from its compliance with Owner's direction pursuant to this **Section 13.4(c)**. Owner is responsible for the cost and actions necessary for removing Hazardous Materials not brought onto the Site by Contractor (or its Subcontractors) or not generated or produced by Contractor (or its Subcontractors) from materials brought to the Site by Contractor (or its Subcontractors).

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(ii) To the extent Contractor encounters Hazardous Materials not introduced by Contractor, Contractor shall use reasonable efforts to minimize the consequences to the Project Milestone Schedule of dealing with such Hazardous Materials.

(iii) Owner has disclosed or shall promptly disclose to Contractor as information becomes available (i) any reports, test results, public records and other sources of information known to Owner which show areas of Contamination at the Site and (ii) any other information related to the condition of the Site. Anything herein to the contrary notwithstanding (but without limiting liability Contractor may have under **Sections 13.4(b) or 13.4(d)(iii)**), title to, ownership of, and legal responsibility and liability for any Contamination shall remain with Owner. Owner shall, at Owner's sole expense and risk, arrange for handling, storage, transportation, treatment and delivery for disposal of Contamination. Owner shall be solely responsible for obtaining a disposal site for such material. Contractor shall not have or exert any control over Owner in Owner's obligations or responsibilities as a generator in the storage, transportation, treatment or disposal of any Contamination. Owner shall complete and execute, in accordance with Applicable Law, any required governmental forms relating to regulated activities, including, but not limited to, generation, storage, handling, treatment, transportation, or disposal of Contamination. In the event that Contractor executes or completes any required governmental forms relating to regulated activities, including, but not limited to, storage, generation, treatment, transportation, handling or disposal of Hazardous Materials (other than in connection with Contractor's responsibilities under **Section 13.4(a)**), Contractor shall be and be deemed to have acted as Owner's agent. Owner shall indemnify, defend, release and hold Contractor, its Affiliates, and their respective officers, directors, agents and employees harmless from all costs, liability, damages and penalties assessed against or paid by Owner or Contractor resulting from Contamination other than costs, liability, damages and penalties for which Contractor provides indemnification pursuant to **Section 13.4(b)**.

(d) **Contractor's Responsibility.** Contractor shall be responsible for the handling, management, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to any Hazardous Materials present at, on, in or under, or migrating and/or emanating to or from the Site, that: (i) were brought or caused to be brought on to the Site and released to the environment by any act or omission of Contractor or any Subcontractor in the course of performance of the Work; (ii) were brought to the Site or caused to be brought to the Site by Owner for Contractor's use in the performance of the Work and that are released to the environment by any act or omission of Contractor or any Subcontractor in the course of performance of the Work; or (iii) were the result of any intentionally wrongful or unlawful act of Contractor or any Subcontractor. Notwithstanding the provisions of clause (i) of this **Section**

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13.4(d), Contractor shall not be liable for any Hazardous Materials brought, or caused to be brought, to the Site by Contractor that are released to the environment by the willful or intentional act or omission of Owner.

ARTICLE XIV

INSURANCE

SECTION 14.1. Contractor's Insurance

Prior to commencement of the Work, Contractor shall obtain the insurance set forth below and all insurance that may be required under the applicable laws, ordinances and regulations of any governmental authority. Review of the Contractor's insurance by Owner shall not relieve or increase the liability of Contractor.

SECTION 14.2. Coverage

Without limiting any of the liabilities or other obligations of Contractor under this Agreement, including, but not limited to, **Article XII "Liability"**, Contractor shall obtain and maintain in effect minimum insurance coverages, at its sole expense, as set forth below, with carriers reasonably acceptable to Owner, until all the obligations under this Agreement are satisfied, the following insurance policies providing coverage protecting against claims for personal and bodily injury or death, as well as claims for third party property damage which may arise from operations in connection with the Work whether such operations are by Contractor or any Subcontractor:

(a) **Workers' Compensation Insurance.** Statutory workers' compensation insurance, in accordance with statutory provisions covering accidental injury, illness or death of any such employee while at work or in the scope of his or her employment with such entity, and employer's liability with [REDACTED] bodily injury for each accident, bodily injury for each employee by disease and policy limit by disease. Such insurance shall not include any occupational disease exclusions.

(b) **Commercial General Liability Insurance,** or the equivalent third party liability insurance coverage written on an occurrence basis with a limit of liability of [REDACTED] per occurrence and [REDACTED] in the aggregate. This policy shall include coverage for bodily injury liability, broad form property damage liability, blanket contractual, products liability, products/completed operations, premises/operations, explosion, collapse, underground hazards, and independent contractors and Subcontractors. Such insurance coverage shall not include exclusions for punitive or exemplary damages where insurable under law.

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(c) **Automobile Liability Insurance**, with a limit of [REDACTED] per accident and [REDACTED] in the aggregate for the policy period with respect to Contractor's vehicles whether owned, hired, or non-owned, assigned to or used in the performance of any Work required to be performed by Contractor pursuant to the Contract Documents.

(d) **Contractor's Pollution Liability**, with a limit [REDACTED] written on a per occurrence basis and [REDACTED] in the aggregate.

(e) **Professional Liability**. Professional Liability Insurance with a limit of [REDACTED] per claim and [REDACTED] in the aggregate for the policy period. This policy shall include coverage for all design and engineering services provided hereunder by Contractor.

(f) **Excess Liability**. Excess Liability Insurance on an occurrence basis and providing cover in excess of the underlying insurance described in paragraphs (a) (with respect to only Employer's Liability Insurance), (b) (with respect to Commercial General Liability Insurance), and (c) (with respect to Business Automobile Liability Insurance) with a limit per occurrence of [REDACTED] and in the aggregate. Such insurance coverage shall include a drop down provision in the event of exhaustion of underlying limits or aggregates and apply on a following form basis to the primary coverage. The amounts of insurance required in the foregoing paragraphs (a), (b) and (c) and this excess insurance section (e) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

(g) **Endorsements and Other Requirements.**

(i) Additional Insured. To the extent of Contractor's indemnity obligations contained herein, Owner, its affiliates, successors, assigns, directors and officers, any lender providing Owner with financing for the Facility shall be included as additional insured(s) with respect to the insurance coverages described in **Section 14.2** except for Workers' Compensation and Professional Liability insurance coverages. It shall be understood that any obligation imposed upon the Contractor, including, but not limited to, the obligation to pay premiums, shall be the sole obligation of the Contractor and not that of Owner.

(ii) Waiver of Subrogation. Except for Professional Liability, insurers shall waive all rights of subrogation against Owner, its affiliates, successors, assigns, Owner's officers, directors, agents and employees, as well as Owner's parents and affiliated or associated companies, lenders providing Owner with

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financing for the Facility, and each of their respective officers, directors, agents and employees, and, where required by contract, any other party as requested by Owner.

(iii) Severability of Interest. The liability insurance specified in this **Section 14.2** (b), (c), and (e) shall state that, with respect to coverage of more than one insured, all terms, conditions, insuring, agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

(iv) Primary and Non-Contributory. To the extent of Contractor's indemnity obligations contained herein, the liability insurance specified in this **Section 14.2** by the Contractor that provides additional insured coverage shall be primary insurance. Any other insurance carried by the Owner shall be excess and not contributory with respect to the insurance required hereunder.

SECTION 14.3. Subcontractors

Contractor's professional liability, automobile and general liability insurance shall cover the liability created by its Subcontractors in connection with their performance of the Work to the extent covered by the terms and conditions of Contractor's policies. Contractor shall use commercially reasonable efforts to require each Subcontractor maintain normal and customary insurance typically obtained from such Subcontractors by Contractor, however in no case less than the insurance specified in paragraphs (a), (b), and (c) of **Section 14.2**. Contractor shall require the Subcontractor's insurance policies to have Owner and any lender providing Owner with financing for the Facility named as additional insureds to the extent of Subcontractor's indemnity obligations with respect to such insurance (except workers compensation coverage). In the event of a claim involving a Subcontractor, Contractor shall be liable for the subcontractor's lack of any insurance required by this **Section 14.3**.

SECTION 14.4. Builder's All Risk Insurance

(a) **Builder's All Risk.** Contractor shall provide builder's all risk insurance covering the Work in a form and in an amount covering the total completed project replacement value which shall cover the interests of Owner, Contractor and its Subcontractors of all tiers, until the earlier of Substantial Completion or the conditions set forth in **Section 14.4(b)**. Deductibles under such builder's all risk insurance shall be for the account of Contractor or Owner in accordance with their responsibility for the loss. Deductibles under such builder's all risk insurance not caused by either Party shall be for the account of Owner. Deductibles for builder's all risk insurance shall not exceed [REDACTED] unless mutually agreed by the Parties or not commercially available. Said coverage shall include coverage for terrorism (including domestic terrorism).

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(b) **Property Insurance.** From and after Substantial Completion, or the date that Owner takes care, custody and control of the Facility or any part thereof, Owner shall maintain property insurance for the Facility or applicable part thereof.

(c) Endorsements and Other Requirements.

(i) Waiver of Subrogation. Insurers providing coverage pursuant to **Section 14.4(b)** shall waive all rights of subrogation against Contractor and its Subcontractors of all tiers and their officers, directors, agents and employees, as well as Contractor's parents and affiliated or associated companies and each of their respective officers, directors, agents and employees, the Owner, its subcontractors and, where required by contract, any other party as requested by Owner or Contractor.

(ii) Severability of Interest. The insurance specified in paragraph (b) of **Section 14.4** shall state that, with respect to coverage of more than one insured, all terms, conditions, insuring, agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

(iii) Primary and Non-Contributory. The insurance specified in paragraph (b) of **Section 14.4** by Owner shall be primary insurance.

(iv) Named Insured. Owner, Contractor and its Subcontractors shall be named insured(s) with respect to the builder's all risk insurance coverage described in **Section 14.4(a)**.

SECTION 14.5. General Requirements

(a) All insurance required to be maintained by Contractor and Owner pursuant to this Agreement shall be written with an insurer or insurers (authorized to do business in the State of Texas and with a minimum A.M. Best rating of A-VIII).

(b) Each Party shall furnish the other Party a completed certificate of insurance that specifically requires that such insurance will not be canceled until the expiration of at least thirty (30) days (to the extent obtainable under commercially reasonable terms) (or ten (10) days in the case of cancellation due to non-payment of premiums) after written notice of such cancellation has been received by the other Party. Contractor shall provide such certificate and at Owner's request, Owner shall, subject to a confidentiality agreement, have the right to review the corresponding final policy binders prior to commencing the Work. Owner shall provide such certificate upon issuance of a Notice to Proceed. Each Party shall notify the other Party at least thirty

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EXHIBIT 3

(30) days prior to any non-renewal or material change applicable to the insurance to be provided by notifying Party hereunder.

ARTICLE XV

OWNERSHIP OF PLANS; REPRESENTATIONS AND WARRANTIES

SECTION 15.1. Title to Plans and Specifications

(a) Any and all products of the Work performed by Contractor, any Subcontractor and any of their employees under the Contract Documents, including but not limited to, all inventions, discoveries, formulas, processes, devices, methods, compositions, compilations, outlines, notes, reports, system plans, flow charts, source code, and other forms of computer software including computer modeling, algorithms, procedures, policies, data, documentation, and other materials or information which Contractor, any Subcontractor or any of their employees may conceive, invent, author, create, reduce to practice, construct, compile, develop, or improve in the course of performing the Work or otherwise delivered to Owner as part of the Work (collectively, "Work Product") shall be the sole and exclusive property of Contractor from and after the time it is created; provided, however, that notwithstanding the foregoing the specific documents (including drawings, manuals and reports) and models delivered by Contractor to Owner shall be the property of Owner for use of Owner, its contractors and successors in operating and maintaining the Facility and in administering these Contract Documents. Contractor and all Subcontractors shall retain all rights and title in its standard drawing details, designs, specifications, databases, computer software and any other proprietary and intellectual property ("Contractor Intellectual Property") incorporated by Contractor's or Subcontractor's engineering documents, drawings, operation and maintenance manuals, and specifications.

(b) License. Contractor will obtain and grant to Owner upon Substantial Completion (together with its successors and assigns) a perpetual, transferable, non-exclusive, royalty free license in all Work Product, including any and all related patent, copyright, trademark, and other property or proprietary rights of any nature whatsoever to use such Work Product for the limited purposes of operation and maintenance of the Plant. Contractor shall use commercially reasonable efforts to obtain for the benefit of Owner a similar license from any Major Subcontractor, as may be necessary for Owner to operate, monitor and maintain the Plant in accordance with Prudent Utility Practice. Contractor further agrees that the sums paid to Contractor by Owner in connection with Contractor's performance of the Work serve, in part, as full consideration for the foregoing license, and that said consideration is fair and reasonable, and was bargained for by Contractor.

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EXHIBIT 3

Contractor represents that it has full right, power and authority to grant the license granted under this Section.

(c) Knowledge. Nothing in this Section should be construed to prohibit Contractor or Subcontractor from using its skills, knowledge and experience that have a general applicability, including such skills, knowledge or experience gained by Contractor or any Subcontractor in connection with performing services for Owner in performing services for other clients; provided, however, that Contractor's or any Subcontractor's knowledge or use thereof shall not include any Confidential Information of Owner.

(d) Use of Work Product. Owner agrees not to use any Work Product, including any drawings, specifications, reports or any unique design aspects of the Project in any other project without the prior written approval of Contractor. Owner shall defend, indemnify and hold harmless the Contractor and its Subcontractors, and their respective successors, assigns, officers, directors, employees, and agents, from and against any and all liabilities, losses, expenses, and claims arising out of any such use occurring without the prior written approval of Contractor.

(e) Contractor Indemnity. Contractor agrees to indemnify and hold Owner harmless, to the fullest extent permitted under Applicable Law, against any claim that the Work Product infringes on the intellectual property rights of a third party or was misappropriated from a third party, except to the extent such Work Product was modified by Owner, including any modifications directed by Owner, and such modification resulted in the claim.

(f) Survivability. The obligations of this Section shall survive any termination of this Contract

SECTION 15.2. Confidentiality

Neither Party shall disclose any Confidential Information to a third party, other than (a) such Party's employees, lenders, counsel, accountants, advisors, rating agencies, equity investors, subcontractors and affiliates, potential lenders or potential equity investors who have a need to know such information with respect to the performance of the relevant Party's obligations under this Agreement and have agreed to keep such terms confidential; or (b) in order to comply with any Applicable Law, regulation, or any exchange, control area or ISO rule, or order issued by a Governmental Authority with competent jurisdiction over the disclosing Party ("**Disclosing Party**"). In connection with disclosures pursuant to clause (b), each Party shall, to the extent practicable, use reasonable efforts to: (i) notify the other Party prior to disclosing the Confidential Information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a disclosure order or making the regulatory disclosures or (ii) liable to the other Party for monetary or other damages incurred in connection with such disclosures of the Confidential Information. Except as provided in the

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EXHIBIT 3

preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The confidentiality obligation hereunder shall not apply to any information that was or hereafter becomes available to the public other than as a result of a disclosure in violation of this **Section 15.2**. The Parties acknowledge that the Equipment Contract is subject to a confidentiality obligation in General Condition [2-13] thereof, with which Contractor expressly agrees to comply. If this Agreement is terminated pursuant to **Article X**, each Party will promptly return or certify the destruction of, if so requested by the other Party, any Confidential Information provided to it and will use commercially reasonable efforts to return any copies thereof that may have been provided to others in accordance with this **Section 15.2**. The obligations of the Parties in this **Section 15.2** will survive the termination of this Agreement and the discharge of all other obligations owed by the Parties to each other.

SECTION 15.3. Owner's Representations and Warranties. Owner hereby represents and warrants to Contractor that

(a) **Corporate Matters.** Owner is a home-rule municipal corporation duly organized, validly existing and in good standing under the laws of the State of Texas. Owner has all the requisite corporate power and authority to conduct its business and to own, lease and operate its properties as presently conducted, owned or leased. Owner has all requisite legal power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(b) **Validity of Agreement; No Conflicts.** The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized and approved by all requisite corporate action on the part of Owner. This Agreement constitutes a legal, binding and valid obligation of Owner, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect that affect creditors' rights generally and by legal and equity principles relating to the availability of specific remedies. The execution and performance by Owner of this Agreement, the consummation of the transactions contemplated hereby, and the compliance with the provisions hereof by Owner will not (a) conflict with, constitute a breach of, or violate any provision of the formation, charter, organizational or governing documents of Owner or violate in any material respect any Law applicable to it, (b) require Owner to file or obtain any Permit with or from any Governmental Authority which has not already been filed or obtained or (c) require any consent under or constitute a breach or default under any material contract to which Owner is a party or any of its assets, properties or businesses is bound.

This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

EXHIBIT 3

(c) No Litigation. There is no action, claim, suit or proceeding by or before any Governmental Authority pending, or to the actual knowledge of Owner, threatened that seeks to prevent the consummation of, or that would materially adversely affect the ability of Owner to consummate, the transactions contemplated hereby.

SECTION 15.4. Representations and Warranties of Contractor.

(a) Corporate Matters. Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of Missouri. Contractor has all the requisite corporate power and authority to conduct its business and to own, lease and operate its properties as presently conducted, owned or leased. Contractor has all requisite legal power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(b) Validity of Agreement; No Conflicts. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized and approved by all requisite corporate action on the part of Contractor. This Agreement constitutes a legal, binding and valid obligation of Contractor, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect that affect creditors' rights generally and by legal and equity principles relating to the availability of specific remedies. The execution and performance by Contractor of this Agreement, the consummation of the transactions contemplated hereby, and the compliance with the provisions hereof by Contractor will not (a) conflict with, constitute a breach of, or violate any provision of the formation, charter, organizational or governing documents of Contractor or violate in any material respect any Law applicable to it, (b) require Contractor to file or obtain any Permit with or from any Governmental Authority which has not already been filed or obtained or (c) require any consent under or constitute a breach or default under any material contract to which Contractor is a party or any of its assets, properties or businesses is bound.

(c) No Litigation. There is no action, claim, suit or proceeding by or before any Governmental Authority pending, or to the actual knowledge of Contractor, threatened that seeks to prevent the consummation of, or that would materially adversely affect the ability of Contractor to consummate, the transactions contemplated hereby.

(d) Expertise and Capability. Contractor has substantial experience and expertise in the engineering and design of balance of plant applicable to, and

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EXHIBIT 3

installation of, natural gas-fired generator sets such as the Equipment and the capability to carry out its obligations under this Agreement. Contractor acknowledges that Owner is relying upon such experience, expertise and capability in executing this Agreement. Contractor has the financial resources, personnel, equipment and other resources necessary to perform the Work under this Agreement on a timely basis.

ARTICLE XVI

FORCE MAJEURE

SECTION 16.1. Force Majeure

“**Force Majeure**” shall mean any event or circumstance to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome, including but not limited to (but only to the extent that the following examples satisfy all of the foregoing elements of this definition):

- (a) acts of God, such as droughts, floods, earthquakes;
- (b) war (declared or undeclared), riots, insurrection, rebellion, acts of the public enemy, acts of terrorism and sabotage, blockades, and embargoes; and
- (c) industry-wide, regional or general (*i.e.*, not directed specifically at or by the Party claiming Force Majeure) strikes, lockouts or other labor disputes.

Notwithstanding the foregoing, Force Majeure shall not include (A) weather conditions reasonably to be expected for the climate in the geographic area of the Facility and any other location where the Work is to be, (B) any delay, default or failure (direct or indirect) in the performance of the Work by any Subcontractor or any other delay, default or failure (financial or otherwise) attributable to a Subcontractor unless such delay, default or failure results from any act, event or condition which would, with respect to such Subcontractor, constitute an event of Force Majeure, (C) failure to timely apply for Permits, (D) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure), or (E) a Party's financial inability to perform under this Agreement.

SECTION 16.2. Applicability of Force Majeure

- (a) Notwithstanding any terms herein to the contrary, neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an event of default, to

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EXHIBIT 3

the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure; provided, that:

(i) the non-performing Party gives the other Party notice within the four (4) days after the date on which the non-performing Party becomes aware of the impact of an event of Force Majeure on the affected Party and documentary evidence with respect to such event of Force Majeure promptly but in no event later than twenty-eight (28) days after such initial notice;

(ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(iii) the non-performing Party proceeds with reasonable diligence to use all reasonable efforts to mitigate the effects of the Force Majeure and to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure;

(iv) when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect; and

(v) the affected Party shall continue to perform its other obligations hereunder not affected by such Force Majeure.

ARTICLE XVII

OTHER PROVISIONS

SECTION 17.1. Assignment

This Agreement and all provisions hereof shall inure to and be binding upon the respective Parties, their successors, and assigns. Since Contractor was selected to perform the Work covered by this Agreement based on its professional qualifications, among other considerations, Contractor shall not assign this Agreement or any part hereof without the prior written consent of Owner; provided, however, that Contractor may subcontract the Work in accordance with the terms hereof. Owner shall have the right, with Contractor's consent which shall not be unreasonably withheld, to assign its interests in this Agreement (i) as security to entities providing financing for the Facility, or (ii) to any Affiliate of Owner. Notwithstanding the foregoing, this Agreement may be assigned without consent to the successor of either Party, or to a person, firm or corporation acquiring all or substantially all of the business assets of such Party or to a wholly-owned subsidiary of either Party.

SECTION 17.2. Independent Contractor

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EXHIBIT 3

In performing the Work, Contractor is acting as, and shall be deemed for all purposes to be, an independent contractor. Owner and Contractor are not partners, agents or joint ventures with each other, and this Agreement is not intended to nor shall it be construed to create a partnership, joint venture, or agency relationship between Owner and Contractor. Contractor shall complete the Work according to Contractor's own procedures, techniques, sequences, means and methods of work, which shall be in the exclusive charge and control of Contractor, and which shall not be subject to the control and supervision of Owner, except as to the results of the Work. Contractor shall be entirely and solely responsible for its acts and the acts of its employees and agents while engaged in the performance of the Work. Except as allowed by this Agreement, Contractor, its employees and agents shall not hold themselves out as employees or agents of Owner. Contractor and its employees are hereby expressly precluded from and not entitled to any employee benefits from Owner. For the purpose of clarifying the ineligibility of the Contractor under Owner's employee benefits plans or programs, Contractor and its employees are hereby specifically excluded from any eligibility and/or are deemed a "temporary employee" when such term is used to define ineligibility in benefits in any Owner employee benefit plan or program.

SECTION 17.3. No Waiver

No term, covenant or condition of the Contract Documents or any breach thereof shall be deemed waived, unless such waiver shall be in writing and executed by the Party claimed to have waived the same. The waiver of any breach by a Party, whether express or implied, shall not constitute a waiver of any subsequent breach.

SECTION 17.4. Gratuities

Contractor shall not, under any circumstances, extend any gratuity or special favor to employees of Owner that might be reasonably construed as an attempt to influence the recipients in the conduct of their official duties.

SECTION 17.5. Severability

If a court or regulatory agency or arbitrator having jurisdiction over the Parties determines that a condition of this Agreement, or any part thereof, is void, illegal or unenforceable, said condition or part shall be deemed to have been severed from this Agreement, and the remaining conditions, or parts, shall be unaffected and shall be enforced to the fullest extent allowed by law.

SECTION 17.6. Governing Law

This Agreement shall be governed and interpreted in accordance with the laws of the State of Texas, without regard to the conflicts of law rules of that State that would require the application of the laws of another jurisdiction.

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EXHIBIT 3

SECTION 17.7. Counterparts

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. Owner may retain a duplicate copy (e.g., electronic image, photocopy, facsimile) of this Agreement, which shall be considered an equivalent to this original.

SECTION 17.8. Entire Agreement

The Contract Documents represent the entire agreement and understanding between Owner and Contractor with respect to the subject matter hereof and performance of the Work, and supersede any prior understandings, representations or agreements, whether verbal or written, prior to execution of this Agreement. No prior course of dealing between the Parties shall form part of, or be used in the interpretation or construction of, any of the Contract Documents. Headings and titles of Sections, paragraphs and other subparts of this Agreement are for convenience of reference only and shall not be considered in interpreting the text of this Agreement. Modifications or amendments to this Agreement must be in writing and executed by a duly authorized representative of each Party. The Contract Documents set forth the full and complete understanding of the Parties as of the date first above stated, and it supersedes any and all agreements and representations made or dated prior thereto. In the event of conflict between the Contract Documents and any of the Exhibits hereto, the terms and provisions of the Contract Documents shall control. In the event of any conflict among the Exhibits, the Exhibit of the latest date shall control.

SECTION 17.9. Agreement Authors

This Agreement has been agreed to by the Parties and no ambiguity shall be construed against any Party based on the identity of the author or authors of this Agreement. THE PARTIES ACKNOWLEDGE AND AGREE THE TERMS AND CONDITIONS OF THIS AGREEMENT HAVE BEEN FREELY, FAIRLY AND THOROUGHLY NEGOTIATED. FURTHER, THE PARTIES ACKNOWLEDGE AND AGREE SUCH TERMS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO THOSE RELATING TO WAIVERS, ALLOCATIONS OF, RELEASES FROM, INDEMNITIES AGAINST AND LIMITATIONS OF LIABILITY, WHICH MAY REQUIRE CONSPICUOUS IDENTIFICATION, HAVE NOT BEEN SO IDENTIFIED BY MUTUAL AGREEMENT AND THE PARTIES HAVE ACTUAL KNOWLEDGE OF THE INTENT AND EFFECT OF SUCH TERMS AND CONDITIONS. EACH PARTY ACKNOWLEDGES THAT IN EXECUTING THIS AGREEMENT THEY RELY SOLELY ON THEIR OWN JUDGMENT, BELIEF, AND KNOWLEDGE, AND SUCH ADVICE AS THEY MAY HAVE RECEIVED FROM THEIR OWN COUNSEL, AND THEY HAVE NOT BEEN INFLUENCED BY ANY REPRESENTATION OR STATEMENTS MADE BY ANY OTHER PARTY OR ITS COUNSEL. NO PROVISION IN THIS AGREEMENT IS

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EXHIBIT 3

TO BE INTERPRETED FOR OR AGAINST ANY PARTY BECAUSE THAT PARTY OR ITS COUNSEL DRAFTED SUCH PROVISION.

SECTION 17.10. Survival of Obligations

The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including but not limited to any expressed limitations of or releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration. Specifically, Contractor's warranty obligations under **Article VI** "Inspection & Warranty" and indemnity obligations, including those under **Articles IV, XII, and XVI** "Compensation", "Liability", and "Other Provisions" and **Section 13.4** "Hazardous Materials", respectively, of this Agreement, and all other warranty and performance obligations, guaranties, and indemnity obligations in the Contract Documents shall survive any termination of the Agreement, and the suspension, completion and acceptance of the Work, or any part thereof, or final payment to Contractor, it being agreed that said obligations and rights are and shall be of a continuing nature. The terms of **Article XI** "Dispute Resolution" and this **Article XVII** shall also survive termination, suspension and completion of this Agreement.

SECTION 17.11. No Third Party Beneficiaries

There are no third party beneficiaries to this Agreement and no third person or entity shall claim that any portion of this Agreement creates a duty running to that third person or entity. The Parties agree to look solely to each other with respect to the obligations and liability arising in connection with this Agreement and the Work performed hereunder. This Agreement and each and every provision hereof is for the exclusive benefit of Owner and Contractor and not for the benefit of any third party, except to the extent such benefits have been expressly extended pursuant to this Agreement.

SECTION 17.12. Further Assurances

Subject to the terms and conditions of this Agreement, the Parties shall use all reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things reasonably necessary, proper or advisable under Applicable Law to consummate the transactions contemplated under this Agreement. Contractor shall cooperate with and provide reasonable assistance to Owner in the financing of the Facility, including the execution of any certificates or consent to assignment of this Agreement requested by Owner's lenders in a form consistent with industry practice and reasonably acceptable to Contractor.

SECTION 17.13. Exclusivity of Remedies

The remedies expressly afforded by this Contract with respect to a particular matter are intended to be the sole and exclusive remedies of the Parties to this Contract for the liabilities

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EXHIBIT 3

of such Parties arising out of or in connection with such matter, notwithstanding any remedy otherwise available at law or in equity.

SECTION 17.14. Right to Audit

Owner has the right to audit all of Contractor's records and billings relating to the performance of the Work under this Agreement for compliance with the terms and conditions of the Agreement and/or any state, federal or local law that is applicable to the Project. Contractor agrees to retain records related to the Project for a minimum of five (5) years following completion of the Work. Owner agrees that it will exercise its right to audit only at reasonable hours. Owner may review any and all of the Services performed by Contractor under this Agreement. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Agreement shall be subject to Owner's rights as may be disclosed by an audit under this section.

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EXHIBIT 3

IN WITNESS WHEREOF, Contractor and Owner have caused this Agreement to be executed on their behalf by their duly authorized representatives as of the date first set forth above.

CITY OF DENTON, TEXAS
a Texas municipal corporation

By: _____
Howard Martin
Interim City Manager

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

By: _____

APPROVED AS TO FORM:
ANITA BURGESS, CITY ATTORNEY

By: _____

Burns and McDonnell Engineering Company, Inc.

By: 

Printed name: Randall B. Gonthier

Title: President - Construction

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Denton Energy Center Scope of Work and Design Basis

prepared for

**City of Denton
Denton, Texas**

AUGUST 2016

prepared by

**Burns & McDonnell Engineering Company, Inc.
Kansas City, Missouri
Firm License NO. F-845**

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EXHIBIT 3

INDEX AND CERTIFICATION

**City of Denton
Denton Energy Center
Scope of Work and Design Basis
Project No. 88038**

Report Index

<u>Chapter Number</u>	<u>Chapter Title</u>	<u>Number of Pages</u>
I	General	4
II	Plant Design Requirements	28
III	System Descriptions	8

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INTENDED FOR CONSTRUCTION PURPOSES**

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EXHIBIT 3

DESIGN BASIS

August 2016

System Descriptions

APPENDIX A - MATERIAL SPECIFICATIONS

Redacted

City of Denton

III-46

Burns & McDonnell

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EXHIBIT 3

APPENDIX B - SUBCONTRACT AND EQUIPMENT LIST

Redacted

EXHIBIT 3

DESIGN BASIS

August 2016

System Descriptions

APPENDIX C - REFERENCE DRAWINGS

Redacted

City of Denton

III-48

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EXHIBIT 3

APPENDIX D - DESIGN DRAWING DELIVERABLES

Redacted

EXHIBIT 3

DESIGN BASIS

August 2016

System Descriptions

APPENDIX E - DME ELECTRIC GENERATING PERMIT

Redacted

City of Denton

III-50

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EXHIBIT 3

DESIGN BASIS

August 2016

System Descriptions

APPENDIX F - FINAL GEOTECHNICAL REPORT

Redacted

City of Denton

III-51

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EXHIBIT 3

APPENDIX G - OEM SCOPE OF SUPPLY AND ENGINE TECHNICAL SPECIFICATION (WITH REFERENCE PREFABRICATION ISOLATION DRAWINGS)

Redacted

EXHIBIT 3

APPENDIX H - COMMERCIAL CLARIFICATIONS

Redacted

EXHIBIT 3



Burns & McDonnell World Headquarters
9400 Ward Parkway
Kansas City, MO 64114
Phone: 816-333-9400
Fax: 816-333-3690
www.burnsmcd.com

Burns & McDonnell: Making our clients successful for more than 100 years

EXHIBIT 3

EXHIBIT B FORM OF CHANGE ORDER

CHANGE ORDER NO. Date

In accordance with **Article V** of that certain Engineering, Procurement and Construction Agreement, dated _____ (the "**Agreement**"), between [_____] ("**Contractor**") and [_____] ("**Owner**"), Contractor and Owner agree as follows:

Description of Change:

Original Contract Price	\$ _____
Previous Change Orders	\$ _____
Amount of this Change Order	\$ _____
New Contract Price	\$ _____

This Change Order will modify the Contract Completion Date as follows:

_____ Increase _____ Decrease _____ No Effect _____ Calendar Days

Capitalized terms used and not defined herein shall have the meaning set forth in the Agreement. Except as modified hereby, the Agreement shall remain in full force and effect and unmodified.

ACCEPTED BY CONTRACTOR

By: _____

Printed Name: _____

Its: _____

ACCEPTED BY OWNER

By: _____

Printed Name: _____

Its: _____

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EXHIBIT 3

EXHIBIT C FORM OF PARTIAL LIEN WAIVERS AND RELEASE

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EXHIBIT 3

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____

Job No. _____

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$_____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

EXHIBIT 3

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date _____

(Company name)

By _____
(Signature)

(Title)

STATE OF TEXAS §
COUNTY OF _____ §

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO BEFORE ME, by
_____ who is the _____ of _____ on this
the _____ day of _____, 20____.

Notary Public In and For
The State of Texas

This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

EXHIBIT 3

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. IT IS PROHIBITED FOR A PERSON TO REQUIRE YOU TO SIGN THIS DOCUMENT IF YOU HAVE NOT BEEN PAID THE PAYMENT AMOUNT SET FORTH BELOW. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____

Job No. _____

The signer of this document has been paid and has received a progress payment in the sum of \$ _____ for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

EXHIBIT 3

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date _____

(Company name)

By _____
(Signature)

(Title)

STATE OF TEXAS §
COUNTY OF _____ §

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO BEFORE ME, by
_____ who is the _____ of _____ on this
the _____ day of _____, 20____.

Notary Public In and For
The State of Texas

This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

EXHIBIT 3

EXHIBIT C-2 FORM OF FINAL LIEN WAIVER AND RELEASE

This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

EXHIBIT 3

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project _____

Job No. _____

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$ _____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

EXHIBIT 3

Date _____

(Company name)

By _____
(Signature)

(Title)

STATE OF TEXAS §
COUNTY OF _____ §

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO BEFORE ME, by
_____ who is the _____ of _____ on this
the _____ day of _____, 20____.

Notary Public In and For
The State of Texas

This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

EXHIBIT 3

EXHIBIT D-1

FORM OF MECHANICAL COMPLETION CERTIFICATE

[_____] , a [_____] ("**Contractor**") does hereby certify that Mechanical Completion has been achieved in accordance with the terms of the Agreement.

IN WITNESS WHEREOF, Contractor has caused this Certificate of Substantial Completion to be duly executed and delivered this ____ day of _____.

[_____]

By: _____

Printed Name: _____

Its: _____

This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

EXHIBIT 3

EXHIBIT D-2

FORM OF SUBSTANTIAL COMPLETION CERTIFICATE

[_____] , a [_____] ("Contractor") does hereby certify that Substantial Completion has been achieved in accordance with the terms of the Agreement.

IN WITNESS WHEREOF, Contractor has caused this Certificate of Substantial Completion to be duly executed and delivered this ____ day of _____.

[_____]

By: _____

Printed Name: _____

Its: _____

This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

EXHIBIT 3

EXHIBIT D-3

FORM OF FINAL COMPLETION CERTIFICATE

[_____] , a [_____] ("**Contractor**") does hereby certify that Final Completion of the Facility has been achieved in accordance with the terms of the Agreement.

IN WITNESS WHEREOF, Contractor has caused this Certificate of Final Completion to be duly executed and delivered this ____ day of _____.

[_____]

By: _____

Printed Name: _____

Its: _____

This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

EXHIBIT 3

EXHIBIT E

NOTICE TO PROCEED – To be provided by Owner

This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

EXHIBIT 3

EXHIBIT F PERMITS

Contractor and Owner shall be each responsible for obtaining and maintaining all permits with respect to the Facility as specified in the following table:

	Permit, License, Approval Name	Approval Authority	DME	BMcD
1	Preliminary Plat	City of Denton	X	
2	Final Plat	City of Denton	X	
3	Curb Cut Permit	City of Denton	X	
4	Clearing & Grading Permit	City of Denton	X	
5a	Drilled Pier Permit	City of Denton		X
5b	Foundation Permit	City of Denton		X
6	Building Permit	City of Denton		X
7	Electric Generating Air Quality Standard Permit	TCEQ	X	
8	NPDES Permit for Construction Activities	TCEQ	X	
9	Aeronautical Obstruction Clearance	FAA	N/A	N/A
10	US Army Corps of Engineers (USACE) Section 404/401 Permit	USACE/ TCEQ	N/A	N/A

This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

EXHIBIT 3

EXHIBIT G MILESTONE PAYMENT SCHEDULE

Description	Value
Limited Notice to Proceed Activities	
Engineering – Phase I: Information Gathering	
Engineering – Phase II: Design Development	
Engineering – Phase III: Construction Documents	
Engineering – Phase IV: Bidding and Negotiations of BMcD purchased items	
Engineering – Phase V: Construction Administration	
Site work & Underground Utilities	
Architectural/Building	
Concrete Foundations	
Electrical Engineered Equipment	
Mechanical Engineered Equipment	
Structural Steel, Ducts & Stacks	
Mechanical Installation	
Electrical Installation	
Electrical Testing	
Builder's Risk Insurance	
Premium to sole-source two (2) Waukesha GSU transformers	
Asphalt Drives in lieu of gravel drives	
P&P Bond in lieu of a parent guarantee	
3rd GSU Transformer (includes Waukesha transformer)	
June 30 th , 2016 Substantial Completion Expedited Schedule	
Owner office trailer for 18 months	
Nighttime Security Services	
Relocation of GSUs 50' west into DME's Substation	
Permanent Guard House & Utilities – Allowance	
Enhanced NERC Security – Allowance	
Expanded laydown area for Wärtsilä -- Allowance	
Total	

EXHIBIT 3

EXHIBIT H FORM OF PERFORMANCE SECURITY

This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

EXHIBIT 3

Bond No.

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Performance Bond

CONTRACTOR:
(Name, legal status and address)

SURETY:
(Name, legal status and principal place of business)

Mailing Address for Notices

OWNER:
(Name, legal status and address)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description:
(Name and location)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond: ☒ None

☐ See Section 16

CONTRACTOR AS PRINCIPAL
Company: (Corporate Seal)

SURETY
Company: (Corporate Seal)

Signature: _____

Signature: _____

Name
and Title:

Name
and Title: Attorney-in-Fact

Surety Phone No.

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

EXHIBIT 3

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

EXHIBIT 3

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

EXHIBIT 3

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company: _____
(Corporate Seal)

SURETY
Company: _____
(Corporate Seal)

Signature: _____
Name and Title: _____
Address _____

Signature: _____
Name and Title: _____
Address _____

EXHIBIT 3

Bond No.

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Payment Bond

CONTRACTOR:

(Name, legal status and address)

SURETY:

(Name, legal status and principal place of business)

Mailing Address for Notices

OWNER:

(Name, legal status and address)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description:

(Name and location)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond:

☒ None

☐ See Section 18

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____

Name
and Title:

Signature: _____

Name
and Title: Attorney-in-Fact

Surety Phone No.

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party.)

EXHIBIT 3

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

EXHIBIT 3

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

EXHIBIT 3

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

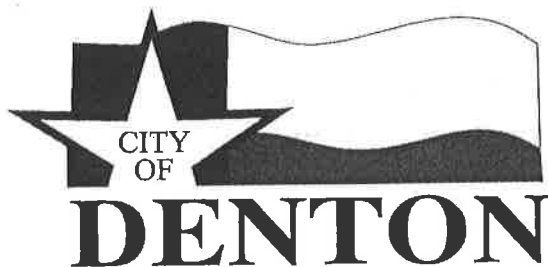
SURETY

Company: _____
(Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

Signature: _____
Name and Title: _____
Address: _____

EXHIBIT I
FORM OF MONTHLY PROGRESS REPORT



City of Denton

Denton Energy Center

MONTHLY PROGRESS REPORT

Month / Year



This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

EXHIBIT 3

MONTHLY PROGRESS REPORT- MONTH / YEAR

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APPENDIX A – PHOTOS

APPENDIX B – PROJECT SCHEDULE

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EXECUTIVE SUMMARY

This progress report covers the project execution activities for the design, procurement and construction of the Denton Energy Center Project for the month of XYZ.

Safety:

Schedule:

Contractual:

1.0 SAFETY

In order to track our performance, we are tracking the following safety statistics; hours worked, first aid cases, property damage incidents and OSHA recordable incidents:

2.0 PERMITS

The permitting matrix was updated as follows:

ENGINEERING

Engineering progress for the month includes the following:

- X,Y,Z

PROCUREMENT

Procurement Packages awarded to date:

- CXYZ - 1

Procurement Packages currently in Bid & Procurement process:

- CXYZ - 2

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3.0 CONSTRUCTION PROGRESS

Construction Progress for the month is as follows:

Civil

Structural

Mechanical

Electrical

Building

4.0 COMMISSIONING & TESTING

Update:

5.0 PROJECT CHANGES

Contractor Change Notices:

Potential Change Orders:

Executed Change Orders to date:

6.0 PROJECT SCHEDULE

The project schedule is included in Appendix C.

7.0 CRITICAL ACTION ITEMS

The Action Item list is filled out and updated through our weekly coordination meetings, however, below are Action Items that are either past due or need attention soon to avoid contract impacts:

None to report at this time.

* * * * *

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EXHIBIT J

KEY PERSONNEL AND PROJECT ORGANIZATIONAL CHART

Key Personnel

Project Director	Brian Elwell
Project Manager	Zach Herrington
Construction Manager	Steve Beaty and/or Brad Butcher

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EXHIBIT K GUARANTEES AND PERFORMANCE TESTS

Station Auxiliary Load is defined as the load associated with the normally running Contractor provided Equipment shown in the below list. The Guaranteed Station Auxiliary Load will be less than or equal to kW.

Note, warm-weather operation is assumed, such that only the following Contractor supplied equipment is operating:

Instrument Air System

- IA Compressor 001A
- IA Compressor 001B
- IA Dryer 001

HVAC

- Gen-Side Fans
- Aux-Side Fans
- Mechanical Room Fans
- Maintenance Area Fans
- Battery Room Exhaust Fans
- Restroom Fans
- Electrical Room and Office AHUs
- MV Switchgear Building AHUs

Lighting

- Engine Hall Lighting
- Common Area Lighting

Electrical System

- LV SWGR Losses
- MCC Losses
- Panelboard Losses
- Small Transformer Losses
- UPS Losses

Transformer Losses

- Aux Transformer Losses
- GSU Transformer Losses

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EXHIBIT L – Not Used

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EXHIBIT 3

EXHIBIT M PROJECT SCHEDULE

[See Following Pages]

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Activity Name	Activity ID	Original Duration	Start	Finish
Denton Energy Center - Expedited				
Project Milestones				
City of Denton				
A1760	Initial Notice to Proceed	0		24-Aug-16
A1750	Building Layout Review Workshop & Approval	0	11-Jul-16	31-Aug-16
A1800	Final Notice to Proceed	0	24-Aug-16	30-Jun-16
A1760	Denton / TNP Prelim. Site Work (Access Rd, Plant Site to Grade, Prep. for Piers) Comp	0		28-Sep-17
A1740	Natural Gas Pipeline and Metering Station Construction Completed	0		03-Apr-17
A1770	Substation Ready for Backfeed of GSU	0		28-Sep-17
Warrisla North America				
A1810	Engine Design Provided - Preliminary	0	22-Sep-16	30-Jun-18
A1820	Engine Design Provided - Basic	0	20-Oct-16	22-Sep-16
A1830	Engine Design Provided - Radiators/Silencers/SCR Final Weights & Sizes	0	20-Oct-16	22-Sep-16
A1840	Engine Design Provided - Detailed	0	07-Dec-16	07-Dec-16
A1850	Delivered to Site - Engine Auxiliaries - Radiators & Silencers	0	01-May-17	01-May-17
A1860	Delivered to Site - Engine Auxiliaries - Pipe Rack / EAM / EGM / EGM Steel	0	21-Jun-17	21-Jun-17
A1870	Delivered to Site - Engine Auxiliaries - SCRs & Balance of Equipment	0	26-Jul-17	26-Jul-17
A1880	Engine Hall 1 - Engine/Generator Setting Complete	0	20-Sep-17	20-Sep-17
A1890	Engine Hall 2 - Engine/Generator Setting Complete	0	06-Oct-17	06-Oct-17
A1910	Acceptance	0	30-Jun-18	30-Jun-18
BMCd				
A1950	Engine Laydown Area Site Prep Complete	0	01-May-17	27-Apr-18
A1920	Engine Hall 1 Foundation Ready for Engine/Generator Setting	0	01-Sep-17	01-Sep-17
A1930	Engine Hall 2 Foundation Ready for Engine/Generator Setting	0	20-Sep-17	20-Sep-17
A1900	Construction Mechanical Completion	0	27-Apr-18	27-Apr-18
City of Denton				
A1050	Electrical Design and Permitting-Switch/Substation	163	11-Jul-18	01-Mar-17
A1100	Natural Gas Pipeline and Metering Station Design & Construction	186	11-Jul-16	03-Apr-17
A1240	Issuance of TCEQ Air Permit	0	11-Jul-16	25-Aug-16
A1360	Building Layout Review Workshop & Approval	1	25-Aug-16	15-May-17
A1130	Electrical Construction - Substation	163	23-Sep-16	15-May-17
A1300	Denton / TNP Prelim. Site Work (Access Rd, Plant Site to Grade, Prep. for Piers)	40	15-Nov-16	13-Jan-17
A1410	Substation Ready for Backfeed of GSU	0	28-Sep-17	28-Sep-17
Design-Build Contractor Selection				
A1450	Initial Notice to Proceed	25	29-Sep-16	29-Sep-16
A1790	Final Notice to Proceed	0	24-Aug-16	24-Aug-16
OEM RICE Engine Supplier				
A1180	OEM Engine Supplier - Notice to Proceed	0	25-Aug-16	01-Jun-17
A1190	Engines - Manufacture & Delivered to Site	195	25-Aug-16	22-Sep-16
A1430	Engine Design Provided - Preliminary	0		20-Oct-16
A1200	Engine Design Provided - Basic	0		20-Oct-16
A1730	Engine Design Provided - Radiators/Silencers/SCR Final Weights & Sizes	0		07-Dec-16
A1210	Engine Design Provided - Detailed	0		01-May-17
A1220	Engine Auxiliaries - Radiators & Silencers - Manufacture & Deliver	95	15-Dec-16	21-Jun-17
A1580	Engine Auxiliaries - Pipe Rack / EAM / EGM / EGM Steel - Manufacture & Deliver	131	15-Dec-16	21-Jun-17
A1570	Engine Auxiliaries - SCRs & Balance of Equipment - Manufacture & Deliver	155	15-Dec-16	28-Jul-17

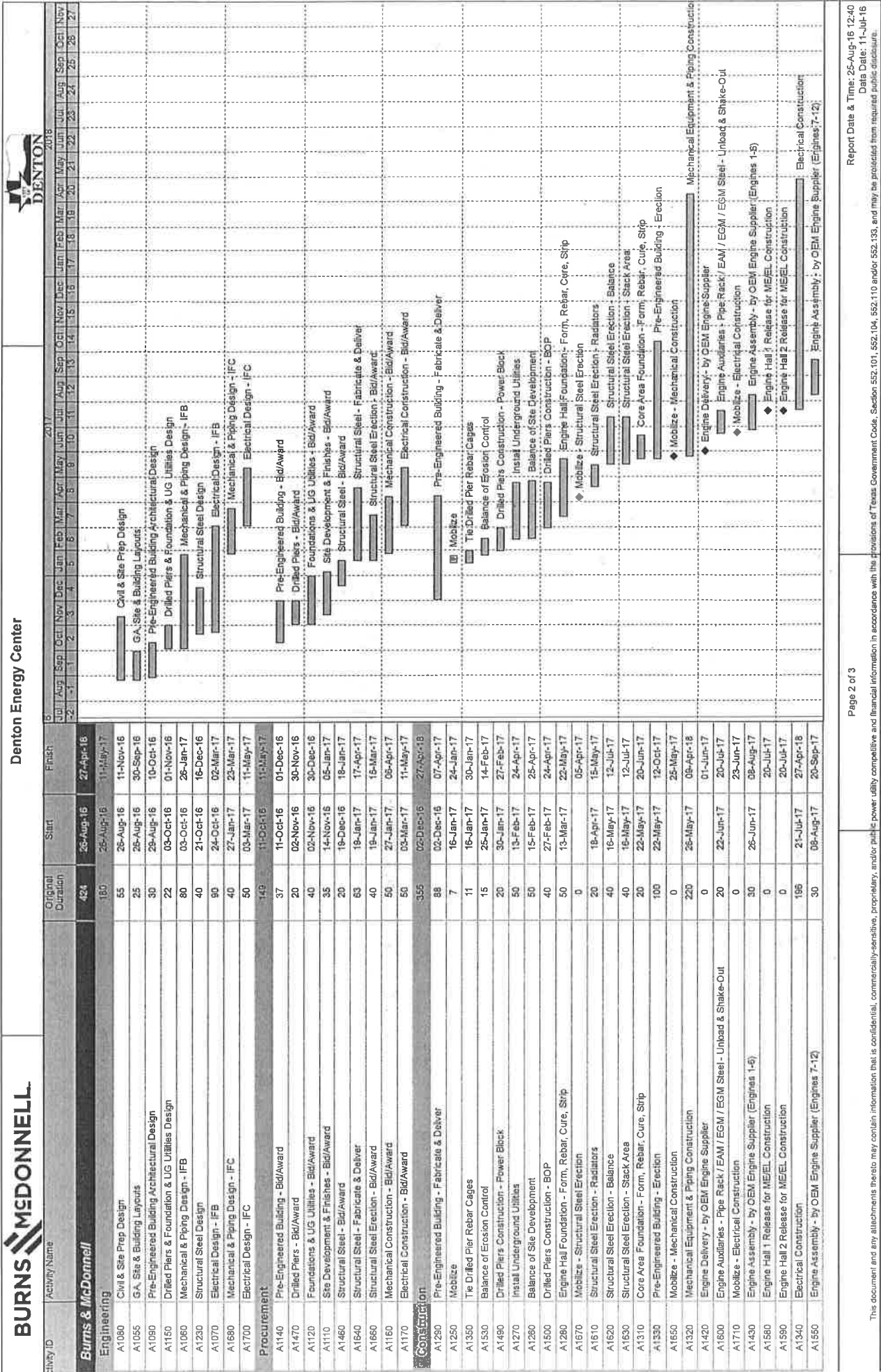


EXHIBIT 3

BURNS & MCDONNELL										Denton Energy Center									
Activity ID	Activity Name	Original Duration	Start	Finish	2017	2018	2019	2020	2021										
A1520	Engine/Generator Setting - by OEM Engine Supplier (Engine Hall 1)	13	01-Sep-17	20-Sep-17															
A1540	Engine/Generator Setting - by OEM Engine Supplier (Engine Hall 2)	13	20-Sep-17	06-Oct-17															
A1370	Pre-Engineered Building - Finishes	60	12-Oct-17	10-Jan-18															
A1380	Construction Mechanical Completion	0		27-Apr-18															
Start-Up & Commissioning																			
A1510	Electrical Testing	148	05-Feb-18	31-Aug-18															
A1390	Start-Up & Commissioning - Balance of Plant - by BMCD	20	05-Feb-18	02-Mar-18															
A1400	Start-Up & Commissioning - by OEM Engine Supplier	60	05-Mar-18	25-May-18															
A1440	Substantial Completion	44	30-Apr-18	29-Jun-18															
A1940	Performance Testing (by Vertisla)	0		30-Jun-18*															
A1720	Emissions Testing (by Owner)	44	02-Jul-18	31-Aug-18															
A1960	Final Completion	14	09-Jul-18	23-Jul-18															
		0		30-Jul-18															
A1970	Station Auxiliary Load Engineering Data Documentation	1	30-Jul-18	31-Jul-18															

Denton Energy Center									
2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30
31									